TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 171.

A. Y. CHRISMAN AND H. T. CHRISMAN, PLAINTIFFS IN ERROR,

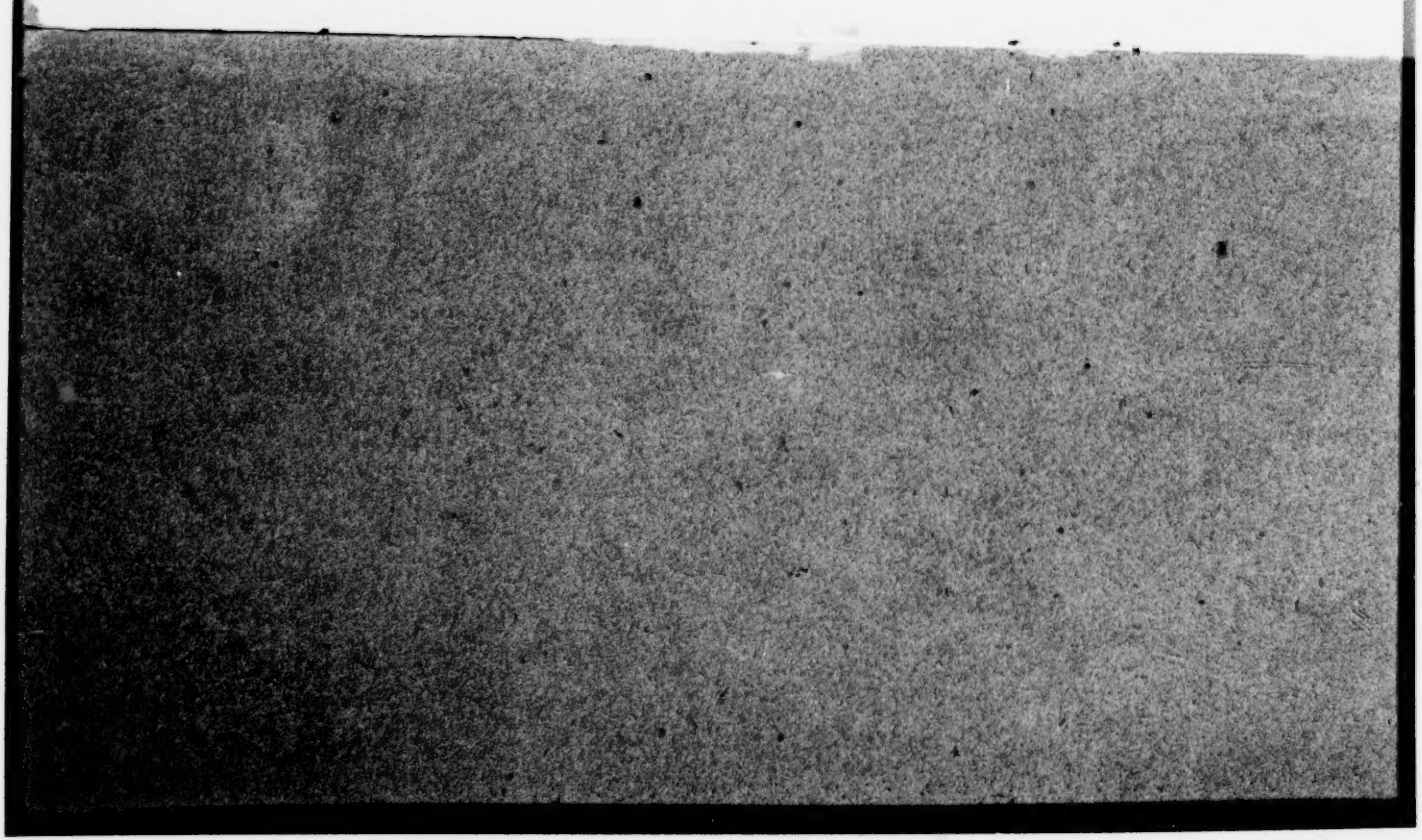
vs.

E. O. MILLER AND THE HOME OIL COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED JANUARY 11, 1905.

(19,193.)



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a In the Supreme Court of the State of California.

E. O. MILLER and THE HOME OIL COMPANY, a Corporation, Plaintiffs and Respondents,
vs.
A. Y. CHRISMAN and H. T. CHRISMAN, Defendants, and J. W. Fewel, Intervenor, Appellants.
} San Francisco, No. 2242.

Transcript on Appeal.

N. C. Coldwell, L. L. Cory, M. K. Harris, Frank H. Short, attorneys for plaintiffs and respondents.
W. R. McQuiddy, Austin & Jones, and Reddy, Campbell & Metson, attorneys for defendants and appellants.
E. O. Larkins, U. T. Clotfelter, and W. S. Badger, attorneys for intervenor and appellant.

Filed this 21st day of February, 1900.

[Seal Supreme Court of California.]

GEO. W. ROOT, *Clerk*,
By A. W. JOHNSON,
Deputy Clerk.

1 In the Supreme Court of the State of California.

E. O. MILLER and THE HOME OIL COMPANY, a Corporation, Respondents,
vs.
A. Y. CHRISMAN & H. T. CHRISMAN, Defendants, and J. W. Fewel, Intervenor, Appellants.

In the Superior Court of the County of Fresno, State of California.

E. O. MILLER and THE HOME OIL COMPANY, a Corporation, Plaintiffs,
vs.
A. Y. CHRISMAN, H. F. CHRISMAN, ET AL., Defendants.
} Complaint.

Come now the plaintiffs and for cause of action against the defendants allege:

I.

That plaintiff, The Home Oil Company, is a corporation duly organized, existing and doing business under the laws of the State of California.

2 II.

That the plaintiffs are ignorant of the names of the defendants who are herein designated as John Doe, Richard Roe, Mary Doe and Susan Stiles, and each and all of said names are fictitious and when the true names of said defendants are discovered plaintiffs will amend this complaint accordingly and set out the true names of said defendants.

III.

That the plaintiff E. O. Miller is the owner of all that certain piece and parcel of land situate in the county of Fresno State of California and more particularly described as follows, to-wit: Commencing at a stake and pile of rocks on which this notice is placed at quarter section corner on the northern boundary line of section 20 in township 19 south, range 15 east, M. D. B. & M., thence running east on the section line, forty chains to the northeast corner of said section 20; thence running south on the eastern line of said section 20, forty chains to a stake at quarter section; thence west forty chains to the legal center of said section 20; thence north forty chains to the place of beginning, and being the northeast quarter of section 20 in township 19 south, range 15 east, M. D. B. & M.

IV.

That the plaintiff, The Home Oil Company, is the lessee of all of said piece and parcel of land under the title of the plaintiff, E. O. Miller and is in the actual possession of the same.

3 V.

That said defendants claim an estate and interest in all of said piece and parcel of land adverse to the said plaintiffs.

VI.

That the claim of the said defendants is without any right whatever and that said defendants have not any estate, right, title, or interest whatever in said land or premises or any part thereof.

Wherefore plaintiffs pray:

1st. That the defendants may be required to set forth the nature of their claims, and that all adverse claims of the said defendants may be determined by a decree of this court.

2nd. That by said decree it be declared and adjudged that the defendants have no estate, right, title or interest whatever in said land and premises.

3rd. That the defendants be forever enjoined and debarred from asserting any claim in and to said premises adverse to the plaintiffs

and that plaintiffs may have such other relief as to this court shall seem meet and agreeable to equity, and for their costs of suit.

N. C. COLDWELL,
L. L. CORY,
M. K. HARRIS,
Attorneys for Plaintiffs.

(Duly verified by E. O. Miller, Oct. 12, 1898)

(Endorsed:) Complaint Filed Oct. 14, 1898. T. G. Hart, clerk. By Ed. E. Bush, dep'y clerk.

4 *Complaint of J. W. Fewel in Intervention.*

(Title of Court and Cause.)

Now comes J. W. Fewel, and by leave of the court first had and obtained, files this as his complaint in intervention in the above entitled cause, and as grounds for his intervention alleges that he holds and claims title to certain portions of the lands set forth in plaintiff's complaint herein to which plaintiffs allege ownership in their complaint, and is entitled to the possession of the same, to-wit: the south half of the northwest quarter of the northeast quarter of section twenty, in township nineteen south, range fifteen east, Mt. Diablo base and meridian, in Fresno county, California, and said intervenor denies and alleges as follows, to-wit:

1. The said intervenor, as to that portion of plaintiff's complaint wherein it is alleged that the said plaintiff, The Home Oil Company, is a corporation duly organized and existing and doing business under the laws of the State of California, alleges that he has no information or belief upon the subject sufficient to enable him to answer thereto and placing his denial upon that ground, denies that the said plaintiff, The Home Oil Company, is a corporation duly organized or existing or doing business under the laws of the State of California.

2. Denies that the said plaintiff, E. O. Miller, is the owner of all, or of any part of that certain piece or parcel of land situate,
5 lying and being in the county of Fresno, State of California, or more particularly described as follows, to-wit: Commencing at a stake or pile of rocks on which this notice is posted at the quarter section corner on the north boundary line of section 20, in township 19 south, range 15 east, M. D. B. & M.; thence running east on the section line forty chains to the northeast corner of said section 20; thence running south on the eastern line of said section 20, forty chains to a stake at quarter section; thence west forty chains to the legal center of said section 20; thence north 40 chains to the place of beginning, and being the N. E. ¼ of section 20, in township 19, range 15 east, M. D. B. & M.

3. That the said intervenor, as to that portion of plaintiffs' complaint wherein it is alleged, "that the plaintiff, The Home Oil Company, is the lessee of all of said piece and parcel of land, under the title of plaintiff, E. O. Miller," alleges that he has no information or belief upon the subject sufficient to enable him to answer and placing his denial upon that ground, denies that the plaintiff, The Home Oil Company is the lessee of all or any part of said piece or parcel of land under the title of said plaintiff, E. O. Miller, or under the title of any other person, or at all; and the said intervenor further denies that said plaintiff, The Home Oil Company, is in the actual possession of all of said premises.

4. Said intervenor alleges that he is the owner and for a long time prior hereto has been the owner of that portion of the
6 land described in plaintiff's complaint as follows to-wit: the south half of the northwest quarter of the northeast quarter of said section 20, township 19 south, range 15 east, M. D. B. & M. and claims title thereto against said plaintiffs and the whole world.

And for a further and separate complaint in intervention herein, and defense in said action, the said intervenor, J. W. Fewel, alleges as follows, to-wit:

I.

That on the 22nd day of December, 1898, the said northeast quarter of said section twenty, in township nineteen south, range fifteen east, M. D. B. & M., situate, lying and being in the county of Fresno, State of California, was a portion of the public domain of the United States of America, and open to exploration and location for mining purposes under the laws of the United States.

II.

That the said above described tract of land was at all times and now is unfit for agricultural or timber culture or grazing purposes and was at all times and now is more valuable for mining purposes than for any other purposes whatever.

III.

That at the times mentioned herein the said intervenor was and is now a citizen of the United States of America, over the age of 21 years; that on the 22nd day of December 1898, the said in-
7 tervenor entered upon and located, under and by virtue of, and in accordance with the laws of the United States, and of the State of California, regulating the sale and appropriation of the mineral lands of the United States, the following described portion of section 20, to-wit: the south half of the northwest quarter of the northeast quarter thereof as a placer mining claim; that on said day the said intervenor posted on the land last above described a notice of location in writing which said notice contained a description of the land claimed therein and thereby, both by metes and

bounds and by reference to the legal subdivision of said section 20; the name of the claim; the name of the locator; the date of the location, and the purpose for which the claim was located, which said notice was signed by the locator therein named, to-wit; this intervenor; that on said day the said intervenor plainly and distinctly marked the boundaries of said claim on the ground so that its boundaries could be readily and easily traced; and thereafter to-wit: on or about the 21st day of January, 1899, said intervenor caused a copy of said notice to be recorded in the office of the county recorder of the county of Fresno, State of California, said county being the county in which said mining claim is situated; that thereafter, to-wit, on or about the 20th day of February, 1899, and within the time limited by law therefor, the said intervenor performed work and labor upon said claim in an amount greatly in excess of the sum of $10.00.

8 IV.

That said section 20 is, and was at all the times mentioned herein, surveyed by the United States; and the said claim located thereon by said intervenor, as aforesaid, was located in such manner that its exterior boundaries and limits conform to the legal subdivisions of said section 20.

V.

That said intervenor made the said above location and holds and claims the lands last hereinbefore described for mining purposes in good faith and for the purpose of developing petroleum and other mineral oils that abound therein, and did on said 22nd day of December 1898, enter into the possession thereof for that purpose, and ever since has been and now is entitled to the exclusive possession and occupancy of the same.

VI.

That the name of the mining claim so located by this intervenor, as aforesaid, is the "Boomer placer claim."

VII.

That the plaintiffs claim to have an estate or interest in the said tract of land last above described adverse to said intervenor, which said claim is without any right or foundation in law or in equity and is fraudulent and void, and is asserted contrary to the laws of the United States of America and of the State of Cali-
9 fornia, governing, regulating and controlling the sale and disposition of the public mineral lands of the United States, in this, to-wit: that on the 14th day of June, 1895, certain persons to-wit: Frank Barrett, Hart H. Barrett, K. W. Brown, J. S. L. McLean, James E. Campbell, James A. McClurg, A. Barieu and J. J. Bright, under and in pursuance of the laws of the United States

governing the locating and appropriating the mineral lands of the United States, located the lands and premises described in plaintiffs' complaint as a placer mining claim to be known as the "King Petroleum placer mining claim." That thereafter, to-wit, on the 24th day of December, 1896, by mesne conveyances, the said plaintiff, E. O. Miller, succeeded to the right, title and interest of the said locators in and to the said "King Petroleum placer mining claim," that during the year 1896, neither the said plaintiff nor any or either of his predecessors in interest in and to the said "King Petroleum placer mining claim," performed or caused to be performed any work or labor thereupon as required by the laws of the United States, by way of annual labor and assessment work, or otherwise; and said intervenor is informed and believes and so alleges upon his information and belief that for the purpose of avoiding the necessity of doing and performing the amount of annual labor or assessment work as required by the laws of the United States for the year 1896, the said plaintiff, E. O. Miller, did, on the 30th day of December 1896, make and execute unto the United States what purported to be an abandonment of all his right, title and interest
10 and of all the right, title and interest of his predecessors in and to the said northeast quarter of said section 20, to the United States, and did immediately thereafter, to-wit, on the 31st day of December 1896, and before said purported abandonment was filed for record in the office of county recorder of Fresno county, together with certain other persons, locate, not only the northeast quarter of said section 20, but also the southwest quarter and the southeast quarter of said section 20, which said locations were made or attempted to be made as follows to-wit, the said plaintiff, E. O. Miller, J. A. Hannah, W. F. Hall, D. G. Overall, Harry Levinson, Chas. H. Smith, L. E. Hall, and R. B. Biddle locating and claiming the said northeast quarter of said section 20, the said plaintiff E. O. Miller, W. G. Dozier, D. G. Overall and others locating and claiming the said southwest quarter of said section 20, and Harry Levinson Chas. H. Smith, L. E. Hall, Cora E. Miller (wife of said plaintiff) Myrtle Hall, J. E. Maxwell and W. G. Dozier, locating and claiming the said southeast quarter of said section 20; that said locations made by said parties other than said plaintiff E. O. Miller, were not made in good faith for the use or benefit of such parties, but were made at the instigation and request of said plaintiff, E. O. Miller, and for his sole use and benefit, and for the purpose of enabling the said E. O. Miller to acquire and hold a greater area of the mineral lands of the United States than the laws of the United
11 States regulating the appropriation thereof permits an individual or an association of individuals to hold or acquire; that within a short time after the location of said lands by the said persons on December 31st 1896, the said J. A. Hannah, W. F. Hall, D. G. Overall, Harry Levinson, Chas. H. Smith, L. E. Hall, and R. B. Biddle, made, executed and delivered to the said plaintiff, E. O. Miller, and did convey to him all their right, title and interest

in and to the said northeast quarter of said section 20, and said intervenor is informed and believes and upon such information and belief alleges the fact to be that the persons mentioned above other than said plaintiff, E. O. Miller, as locating the said southwest and southeast quarters of said section 20, conveyed all their right title and interest in and to the said portion of said section 20, to said plaintiff E. O. Miller, shortly after making the locations thereof; that said location by the said plaintiff, E. O. Miller and the other persons above mentioned, on the said northeast quarter of said section 20, was made in pursuance of and in accordance with a conspiracy, collusion and concerted design upon the part of the said locators or purported locators to secure and appropriate the said lands and to secure title thereto by avoiding and in direct conflict with and opposition to the requirements of the laws of the United States; that said location or attempted location on the said northeast quarter of said section 20, on December 31st, 1896, was a relocation by the original locator and was also made at a time when the
12 land included therein was not open to exploration and location under the laws of the United States and of the State of California, and was therefore premature and invalid and of no force and effect either in favor of said locators or as against this intervenor; that said locations or attempted locations made on December 31st 1896, was contrary to the laws of the United States for the reason that it was and is contiguous to other claims mentioned above and was an attempt to make and hold in violation of the laws of the United States a greater area of the mineral lands of the United States than is or was permitted to be appropriated either by an individual or an association of individuals; that the boundaries of the said claim involving the said northeast quarter of said section twenty were not properly marked upon the ground and were not marked in any manner so that the same can be readily and easily traced; that said intervenor is informed and believes and upon such information and belief alleges the fact to be that the said plaintiff, E. O. Miller, in furtherance of and in pursuance of his design to secure the title to the said northeast quarter of said section 20, entered into a conspiracy and collusion and a concerted design with one George L. Dineley, whereby he, the said E. O. Miller, procured the said George L. Dineley, to make a homestead entry upon the said northeast quarter of said section 20, in the United States land office in Visalia California, on the 20th day of October, 1896;
13 and afterwards the said E. O. Miller made application to the State of California to have the said northeast quarter of said section 20 selected as State indemnity land, which said application was made on or about the 18th day of December, 1896, and did thereafter procure one, Ernest L. Smith, to make application to purchase the said land as such State indemnity selection, and afterwards, on the 14th day of February, 1898, secured the abandonment and relinquishment of the said State indemnity selection.

VIII.

That all of the said acts upon the part of the said plaintiff, E. O. Miller, and upon the part of the other persons named herein, were, are, and constitute, fraud against the said intervenor, and against the United States, so this defendant is informed and believes, and upon such information and belief so alleges the fact to be.

Wherefore said intervenor prays that said plaintiffs take nothing by this action, and that he have judgment for costs incurred herein; that it be adjudged and decreed that this intervenor is the owner and entitled to the immediate and exclusive possession of the lands and premises hereinbefore described as being owned and claimed by him, and that said plaintiffs, and neither of them have any right, title, interest or claim therein or thereto; that he have such other and further relief as may upon the hearing hereof appear to be just and equitable.

14

E. O. LARKINS,
U. T. CLOTFELTER &
W. S. BADGER,
Attorneys for said Intervenor.

(Duly verified.)

Service and receipt of copy of within proposed complaint in intervention admitted this 2d day of May, 1899.

M. K. HARRIS,
Att'y for Pl'ffs.

(Endorsed:) Filed May 2nd, 1899. G. W. Cartwright, clerk. By J. S. Pugh, deputy clerk.

Second Amended Answer of the Defendants A. Y. Chrisman and Henry T. Chrisman.

(Title of Court and Cause.)

Come now the defendants A. Y. Chrisman and Henry T. Chrisman, and leave of the court being first had and obtained file this, their second amended answer to plaintiff's complaint and defendants deny and allege as follows, to-wit:

I.

Defendants allege that the true name of the defendant named in plaintiff's complaint as "H. F. Chrisman" is "Henry T. Chrisman."

II.

The defendants allege, that they have no information or belief upon the subject sufficient to enable them to answer the allegation in plaintiff's complaint that the said plaintiff, The Home Oil Com-

pany, is a corporation, duly organized and existing and doing
15 business under the laws of the State of California, and placing their denial upon that ground these defendants deny, that the said plaintiff, The Home Oil Company, is a corporation duly organized and existing and doing business under the laws of the State of California.

III.

These defendants deny, that the plaintiff E. O. Miller is the owner of all or of any part of that certain piece and parcel of land situate, lying and being in the county of Fresno, State of California, and more particularly described as follows to-wit:

Commencing at a stake and pile of rocks on which this notice is posted at quarter section corner on the northerly boundary line of section twenty, township nineteen south, range fifteen east M. D. B. & M.; thence running east on section line forty chains to the northeast corner of said section twenty; thence running south on the easterly boundary line of said section twenty, forty chains, to a stake at quarter section corner, thence west forty chains to the legal center of said section twenty; thence north forty chains to the place of beginning and being the northeast quarter of section twenty in township nineteen south, range fifteen east M. D. B. & M.

IV.

These defendants allege that they have no information or belief upon the subject sufficient to enable them to answer the alle-
16 gation in plaintiff's complaint that the plaintiff The Home Oil Company is the lessee of all the above described parcel of land under the title of the plaintiff E. O. Miller, and placing their denial upon that ground, these defendants deny, that the said plaintiff The Home Oil Company, is the lessee of all of said above described premises or of any part thereof, under the title of the plaintiff E. O. Miller or under the title of any other person, or at all; and these defendants further deny upon the same ground, that the said plaintiffs or either of them was ever, at any time, or now is, in the actual or any possession of all, or of any part of the said above described tract of land; but on the contrary these defendants allege, that they, the said A. Y. Chrisman and Henry T. Chrisman are now, and ever since the first day of January, 1897 have been, the owners of, entitled to the possession of, and in the peaceable quiet and actual possession of, all that part of said above described tract of land, particularly described as follows:

The south half of the southeast quarter of the northeast quarter and the south half of the southwest quarter of the northeast quarter of said section twenty, township nineteen south, range fifteen east, M. D. B. & M.

V.

These defendants deny, that they or either of them have or claim to have an estate or interest in, or the possession of, or any right to the possession of, all that tract of land and premises described
17 in plaintiffs' complaint, adversely to said plaintiffs or to either of them. On the contrary these defendants allege, that they the said A. Y. Chrisman and Henry T. Chrisman, are now, and ever since the first day of January, 1897, have been, the owners and entitled to the possession of, and in the actual, peaceable and quiet possession of, that portion of the northeast quarter of section twenty, township nineteen south, range fifteen east, M. D. B. & M. described as follows, towit.

The said A. Y. Chrisman is the owner of, entitled to the possession of and in the actual possession of the south half of the southwest quarter of said northeast quarter; and that the said Henry T. Chrisman is the owner of, entitled to the possession of, and in the actual possession of the south half of the southeast quarter of the said northeast quarter. These defendants further deny, that the said ownership and claim of ownership of these defendants or of either of them in and to the tracts of land last above described, is without right, and these defendants deny that they, the said defendants or either of them, have not or has not any estate or right or title or interest whatever in the said land and premises or in and to any part thereof. On the contrary these defendants allege, that they are the owners of and in the actual possession of, those portions of same last above described.

And for a second and further and seperate defense herein, these defendants allege,

I.

18 That on the first day of January 1897, the northeast quarter of section twenty, in township nineteen south, range fifteen east, M. D. B. & M., in the county of Fresno, State of California, was a portion of the public domain of the United States and open to exploration and location for mining purposes under the laws of the United States.

II.

That the said tract of land above described was, at all times and now is, unfit for agriculture, timber culture or for grazing purposes, and was on the first day of January, 1897 and at all times since that date has been, and now is, more valuable for mining purposes than for any other purposes whatever; that said land then was, ever since has been, and now is, chiefly valuable for the petroleum and other mineral oils contained therein.

III.

That on the first day of January, 1897, A. Y. Chrisman, one of these defendants, being then and there a citizen of the United States,

over the age of twenty-one years made a mineral location upon a portion of said northeast quarter of said section twenty, by then and there posting upon the land so claimed by him, a notice containing a description of the land so claimed by him and the name of the locator, and by so marking his said location on the ground that the boundaries thereof could be readily traced; and that his said location is more particularly described as follows:

"Commencing at the center of said section twenty; running
19 thence north forty rods; thence east eighty rods, thence south forty rods; thence west eighty rods to the place of beginning, the said location being named and called "the Beehive placer mining claim," and that a seepage of petroleum or other mineral oil had been discovered by said A. Y. Chrisman upon said tract of land prior to the making of said location, said land being at the time of such location vacant public mineral land.

IV.

That on the first day of January 1897, Henry T. Chrismen, one of these defendants, being then and there a citizen of the United States of America, over the age of twenty-one years made a mineral location upon a portion of the aforesaid northeast quarter of said section twenty, by then and there posting upon the land so claimed by him a notice in writing containing a description of the land so claimed by him and the name of the locator, and by so marking his said location upon the ground that the boundaries thereof could be readily traced; and that his location is more particularly described as follows, to wit:

"Commencing at the southeast corner of the northeast quarter of said section twenty, and running thence north forty rods; thence west eighty rods; thence south forty rods; thence east eighty rods to the place of beginning, the said location being named and called
"the Paradise placer mining claim;" and that a seepage of
20 petroleum and other mineral oil had been discovered by him upon said tract of land prior to the making of said location, said land being at the time of said location vacant public mineral land.

V.

That said section twenty was, on the first day of January, 1897, a part of the public domain of the United States which had previously been surveyed and a plat thereof in the United States land office at Visalia, California; that each of said tracts of land claimed by these defendants as aforesaid for mining purposes, was and is located and was and is describe- in the notice of such locations posted thereon as aforesaid, according to the legal subdivisions of said section twenty and the said locations, as to their exterior boundaries and limits, were made to conform to the boundaries and limits of such legal subdivisions.

VI.

That these defendants made the said above mentioned locations for mining purposes in good faith, and entered into the possession thereof for the purpose of working and mining thereon on the first day of January, 1897, and have since that date done and performed thereon such work and labor and made improvements thereon as is required by the laws of the United States and by the laws of the State of California, and that these defendants have been and now are in the exclusive possession of said tracts of land so claimed by them, and ever since the first day of January, 1897, these
21 defendants have been and now are entitled to the exclusive possession of the tracts of land above described and so claimed by them.

VII.

That the plaintiffs and each of them claim or claims to have an interest or estate in the tracts of land so claimed and held by these defendants adversely to said plaintiffs and that said claim or claims by said plaintiffs and by each of them is without right, and said plaintiffs nor either of them have or has any estate, right, title, claim or interest in or to said tracts of land, or in or to either of them, or in or to any part of either of said tracts.

For a third, further and separate defense to this action, these defendants allege:

I.

That on the 14th day of June, 1895, as these defendants have been informed and believe, certain persons, viz: Frank Barrett, K. W. Brown, James L. McLean, James E. Campbell, James A. McClurg, Sr., Hart H. Barrett, A. Barneau, and J. J. Bright, made or pretended to make upon said northeast quarter of said section twenty, in township nineteen south, range fifteen east, Mt. D. B. & M., a mineral location, which said locators named and called "The King Petroleum mining claim;" that subsequently to-wit: on or about the 24th day of December, 1896, the persons named in the preceding paragraph, made, executed and delivered to the Producers and
22 Consumers Oil Company, a corporation, a deed or deeds conveying to the said Producers and Consumers Oil Company, all the interest, claim and title in and to said tract of land which the said persons or any of them then had or claimed to have; that on or about the 24th day of December, 1896, the aforesaid corporation, the Producers and Consumers Oil Company, made, executed and delivered to E. O. Miller one of the plaintiffs herein, a quit-claim deed conveying and quitclaiming unto the said E. O. Miller all the right, title, claim and interest of said Producers and Consumers Oil Company in and to said northeast quarter of said section twenty, and in and to every part thereof; that thereafter to-wit, on the thirty-first day of December, 1896, the said E. O. Miller, by his written decla-

ration, abandoned, relinquished, and released unto the United States of America all right in and to said tract of land acquired by him from said Producers and Consumers Oil Company and its grantors.

II.

These defendants upon their information and belief allege; that prior to the thirty-first day of December, 1896, and subsequent to the 14th day of June, 1895, E. O. Miller one of the plaintiffs herein entered into a conspiracy and collusion with Frank Barrett, J. A. Hannah and W. F. Hall to fraudulently obtain title to more of the public lands of the United States then known to contain petroleum and other mineral oils and chiefly valuable therefor, than any
23 person or association of persons might legally and rightfully appropriate under the laws of the United States.

III.

These defendants further allege, upon their information and belief that the transfer and conveyance of title from the locators of the aforesaid King Petroleum placer mining claim to the said E. O. Miller was fraudulent and without consideration and made pursuant to the aforesaid conspiracy and collusion between the said E. O. Miller, Frank Barrett, W. F. Hall and J. A. Hannah.

IV.

These defendants further allege upon their information and belief that in pursuance of his fraudulent design to obtain title to said northeast quarter of said section twenty and other contiguous lands, the said E. O. Miller entered into a conspiracy and collusion and concerted design with one George L. Dinely, whereby the said George L. Dinely, at the instigation of, and for the benefit of the said E. O. Miller and his co-conspirators above named, and not for his own benefit, made a homestead entry upon said northeast quarter of said section twenty under the laws of the United States, in the U. S. land office at Visalia, California, on the 20th day of October, 1896, and that thereafter to wit: on or about the 17th day of December, 1896, the said George L. Dinely, at the instigation of the said E. O. Miller and in furtherance of his fraudulent design as aforesaid, relinquished and abandoned his said homestead entry.

24 V.

These defendants further allege, upon their information and belief, that said E. O. Miller in furtherance of the aforesaid conspiracy and collusion and of his fraudulent design to acquire title to said northeast quarter of said section twenty, entered into a conspiracy and collusion and concerted design with one Ernest L. Smith on or about December 15th, 1896, whereby the said Ernest L. Smith

upon the instigation of the said E. O. Miller and for the benefit of the said E. O. Miller and his co-conspirators as aforesaid, made application on said date, to the surveyor general of the State of California, to purchase said northeast quarter of said section twenty as school land belonging to said State of California, and requested and procured of the surveyor general of said State that he make application to the Land Department of the United States to have said tract of land set over and transferred to said State of California in lieu of other lands granted to said State by the United States but lost to the State by reason of their being mineral or saline; and that such selection by the surveyor general of the State of California was duly made on or about the 17th day of December, 1896; that on or about the 14th day of February, 1898, the aforesaid Ernest L. Smith at the instigation of the said E. O. Miller and for the benefit of the said E. O. Miller, and not for his own benefit, relinquished and abandoned his application to purchase said tract of land
25 from the State of California, and caused the surveyor general of said State to withdraw his indemnity selection of same.

III.

These defendants further allege upon their information and belief, that on or about the forenoon of the 31st day of December, 1896, the said E. O. Miller and J. A. Hannah and W. F. Hall for their own benefit and in furtherance, of their aforesaid fraudulent design to acquire title to said northeast quarter of said section twenty, went upon said tract of land and posted thereon a notice in writing that they claimed said northeast quarter and the whole thereof for mining purposes under the laws of the United States, to which notice the following names were attached as the names of the locators of the said mining claim, to wit: E. O. Miller, W. F. Hall, D. G. Overall, Harry Levinson, Chas. H. Smith, J. A. Hannah, L. E. Hall and R. B. Biddle and that the use of the names of L. E. Hall, R. B. Biddle, D. G. Ooverall, Chas. H. Smith and Harry Levinson as locators was without their privity and consent and not for their benefit, but for the benefit only of the said E. O. Miller, J. A. Hannah and W. F. Hall and in furtherance of their fraudulent design to acquire title to said northeast quarter of the said section twenty.

These defendants further allege, upon their information and belief, that on said 31st day of December, 1896, the aforesaid, E. O. Miller, W. F. Hall and J. A. Hannah in furtherance of their fraudu-
26 lent design to acquire title to more of the mineral lands of the United States than the law allows to be acquired by an individual or association of individuals, posted upon the southeast quarter of said section twenty, a notice in writing, claiming said tract of land and the whole thereof as mineral land, in which notice the following names were written as the names of the locators of said mining location, to wit: W. G. Dozier, Harry Levinson, J. E. Maxwell, Myrtle Hall, Cora E. Miller, Kate Hannah, Chas. H. Smith

and L. E. Hall, and that the use of the names of all of said pretended locators was without the privity and consent of the persons so named, and not for the benefit of such persons, but for the benefit of the said E. O. Miller, W. F. Hall and J. A. Hannah and in furtherance of their aforesaid fraudulent design and intent.

V.

These defendants further allege, upon their information and belief, that on the forenoon of the aforesaid 31st day of December, 1896 the aforesaid E. O. Miller, W. F. Hall and J. A. Hannah, in furtherance of their fraudulent design to acquire title to more of the mineral land of the United States than the laws of the said United States allow to be acquired by any individual or association of individuals posted upon the southeast quarter of said section twenty, a notice in writing claiming said tract of land and the whole thereof for mining purposes, in which notice were written the following names as the names of locators of said mining location, to wit: Ernest L. Smith, J. A. Hannah, Chas. H. Smith, W. F. Hall, W. G. Dozier, Herman J. Miller, J. E. Maxwell and D. G. Overall; and that the use of the names of D. G. Overall, J. E. Maxwell, Herman J. Miller, W. G. Dozier, Chas. H. Smith and Ernest L. Smith as locators was without the privity and consent of the persons so named and not for their benefit, but for the benefit only of the said E. O. Miller, J. A. Hannah and W. F. Hall, and in furtherance of their aforesaid fraudulent design to acquire title to said tract of land.

27

VI.

These defendants further allege upon their information and belief that the aforesaid attempted locations by the said E. O. Miller and his associates upon said section twenty were and are fraudulent and void as against the United States and against these defendants and *was* made and attempted to be made contrary *of* the laws of the United States and of the State of California relating to the location and possession and appropriation of the mineral lands of the United States in the following particulars, to wit:

1st. Said locations were not made in good faith by said locators.

2nd. Said locations were an attempt at relocating the same lands by original locators.

3rd. Said attempted locations were made for the express purpose of avoiding the necessity of doing and performing the assessment work upon said claims for the year 1896, and to avoid the making of improvements upon said claims during said year 1896, as required by the laws of the United States and of the State of California.

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4th. Said attempted locations were made in pursuance of a conspiracy, collusion and concerted design upon the part of the said E. O. Miller, W. F. Hall and J. A. Hannah to secure and appro-

priate said lands and acquire title thereto by avoiding the provisions and requirements of the laws of the United States and by fraud.

5th. Said E. O. Miller, W. F. Hall and J. A. Hannah by said attempted locations were seeking to acquire and hold to themselves and for their benefit a greater amount of the mineral land of the United States than the laws of the United States allow or permit an individual or association of individuals to appropriate and hold.

6th. That said tracts of land are contiguous and form in fact but one body of land, so that several claims by one individual or one association of individuals thereon cannot be made and held.

Wherefore, these defendants pray,

1st. That said plaintiffs may be required to set forth the nature of their claim or claims to the tracts of lands claimed by these defendants and in and to any part thereof, and that all adverse claims of said plaintiffs may be determined by a decree of this court.

2nd. That by said decree, it be declared and adjudged that
29 said plaintiffs and each of them have and has no estate, right, title, claim or interest in and to, the tracts of land claimed by these defendants or in and to any part thereof.

3rd. That said plaintiffs and each of them be forever enjoined and debarred from asserting any claim in and to said tracts of land, and in and to every part thereof, adverse to these defendants.

4th. That these defendants have such other and further relief as to the court may seem meet and agreeable to equity and judgment for their costs herein.

REDDY, CAMPBELL & METSON,
W. R. McQUIDDY,
HORACE L. SMITH,
AUSTIN & JONES, AND
E. O. LARKINS,
Attorneys for the Defendants, A. Y. Chrisman & Henry T. Chrisman.

(Duly verified.)

Service of the above 2d amended answer is hereby admitted this 20th day of May, 1899.

N. C. COLDWELL,
M. K. HARRIS,
L. L. CORY,
Attorney- for Pl'ffs.
E. O. LARKINS,
U. T. CLOTFELTER, &
W. S. BADGER,
Att'ys for said Intervenor.

(Endorsed:) Filed May 20, 1899. G. W. Cartwright, clerk. By J. E. Cartwright, deputy clerk.

30 *Answer of Plaintiffs to Complaint in Intervention.*

(Title of Court and Cause.)

Come now the plaintiffs in the above entitled action, and answering the complaint of J. W. Fewel in intervention herein, deny and allege as follows, to-wit:

I.

They deny that on the 22nd day of December, 1898, the northeast quarter of section twenty, township nineteen south, of range fifteen east, M. D. B. & M., situated in Fresno county, State of California, was a portion of the public domain of the United States of America, or open to exploration or location for mining purposes, under the laws of the United States.

II.

Plaintiffs deny on their information and belief, that on the 22nd day of December, 1898, said intervenor entered upon or located, under and by virtue of, or in accordance with the laws of the United States, or of the State of California, regulating the sale and appropriation of the mineral lands of the United States, or at all, the following described portion of said section twenty, to-wit: the south half of the northwest quarter thereof as a placer mining claim, or that on said day said intervenor posted on said above described land a notice of location in writing, which said notice contained a description of the land claimed therein or thereby, both by metes and bounds or by reference to the legal subdivision of
31 said section 20, the name of the claim, the name of the locator, the date of the location, or the purpose for which said claim was located, or that said notice was signed by the locator therein named, to wit, said intervenor, or that on said day said intervenor plainly or distinctly, or at all, marked the boundaries of said claim on the ground so that its boundaries could be readily or easily traced, or that he marked the boundaries of said alleged claim in any other manner, or that thereafter, on or about the 21st day of January, 1899, said intervenor caused a copy of said notice to be recorded in the office of the county recorder of the county of Fresno, State of California, or that on or about the 20th day of February, 1899, or within the time limited by law therefor, or at any other time, or in any other manner, said intervenor performed work or labor upon said claim in an amount in excess of the sum of $10.00, or in any other amount, or at all.

III.

Plaintiffs deny upon their information and belief, that said alleged claim located by said intervenor, was located in such a manner that

its exterior boundaries or limits conform to the legal subdivision of said section 20.

IV.

Plaintiffs deny that said intervenor made said above location, or holds or claims said lands for mining purposes in good faith, or for the purpose of developing petroleum and other mineral oils that abound therein, or that said alleged location was made by
32 said intervenor, or that he holds or claims said land for any other purposes, or at all, or that he did on the 22nd day of December, 1898, or at any other time, enter into the possession of said land for any of said purposes alleged in paragraph V of said complaint in intervention, or for any other purposes, or ever since said time has been, or now is, entitled to the exclusive or any possession or occupancy of said land.

V.

Plaintiffs further deny upon their information and belief, that the name of said alleged mining claim so alleged to have been located by said intervenor, is the "Boomer placer claim," or that it has any other name.

VI.

Plaintiffs admit that they claim an estate and interest in said tract of land last above described adverse to said intervenor, but deny that said claim is without any right or foundation in law or in equity, or that the same is fraudulent or void, or is asserted contrary to the laws of the United States of America, or of the State of California, governing, regulating or controlling the sale or disposition of the public mineral lands of the United States; that as to the allegation in paragraph VII in said complaint, that on the 14th day of June, 1895, Frank Barrett and the other persons therein named, located said land and premises, plaintiffs have no information or belief sufficient to answer said allegation, and placing their denial upon that ground they deny that on the 14th
33 day of June, 1895, the persons named in said complaint in intervention, located the lands and premises described in plaintiffs' complaint as a placer mining claim to be known as the "King Petroleum placer mining claim," under and in pursuance of the laws of the United States governing the locating and appropriating the mineral lands of the United States; they admit that on the 24th day of December, 1896, by mesne conveyances this plaintiff, E. O. Miller, succeeded to the right, title and interest of said alleged locator in and to the said King Petroleum placer mining claim; deny that during the year 1896, neither the said plaintiff, E. O. Miller, or any or either of his predecessors in interest in and to the said King Petroleum placer mining claim, performed or caused to be performed any work or labor thereupon as required by the laws of the United States, by way of annual labor and assess-

ment work, or otherwise; deny that for the purpose of avoiding the necessity of doing and performing, or doing or performing the amount of annual labor or assessment work, as required by the laws of the United States, for the year 1896, the said plaintiff, E. O. Miller, did on the 30th day of December, 1896, or upon any day whatever make and execute, or make or execute, unto the United States what purported to be an abandonment of all his right, title and interest, or of all or any of his right, title or interest or of all or any of the right, title or interest of his predecessors in interest in and to the said northeast quarter of said
34 section 20 to the United States; they admit that the plaintiff, E. O. Miller, together with the proper persons in said complaint in intervention named, did on the 31st day of December, 1896, make the location and locate the lands in said complaint in intervention mentioned and described; deny that said location, or any location made by said parties other than plaintiff, E. O. Miller, were not made in good faith for the use and benefit of such parties, and deny that said location, or any of said locations were made by said parties, or any of said parties, at the instigation and request or instigation or request of said plaintiff, E. O. Miller, and deny that said locations or any of said locations were made by said parties or any of said parties, for the sole use and benefit, or use or benefit of the said E. O. Miller, or for the purpose of enabling the said E. O. Miller to acquire and hold a greater area of the mineral lands of the United States than the laws of the United States regulating the appropriation thereof permits an individual or an association of individuals to hold or acquire; admit that after the location of said lands by said persons on the 31st day of December, 1896, said J. A. Hannah, W. F. Hall, D. G. Overall, Harry Levinson, Chas. H. Smith, L. E. Hall and R. B. Biddle, made, executed and delivered to the said E. O. Miller, and that they did convey to him all their right, title and interest in and to the said northeast quarter of said section 20, and in this behalf they allege that said persons executed and delivered said convey-
35 ance to said Miller on the — day of ——, A. D., 1897, and that said conveyance was made for a good valuable consideration: they deny that said location by the said plaintiff, E. O. Miller, and the other persons mentioned in said complaint in intervention, on the said northeast quarter of said section 20, was made in pursuance of, and in accordance with a conspiracy, collusion and concerted design, or conspiracy, or collusion, or concerted design upon the part of the said locator to secure and appropriate, or to secure or appropriate the said lands, or to secure title to said lands by avoiding and in direct conflict with, or by avoiding or in direct conflict with, or in opposition to the requirements of the laws of the United States. They deny that said location on said northeast quarter of said section 20, on December 31st, 1896, was a re-location by the original locator, and they deny that said location was made at a time when the land included therein was not open to explora-

tion and location under the laws of the United States, and of the State of California, and deny that said location was for any cause premature and invalid, and of no force and effect, or that the same was premature or invalid, or of no force and effect, or of no force or effect, either in favor of said locators, or as against this intervenor, and they deny that said location so made on December 31st, 1896, was contrary to the laws of the United States, for the reason that it was, and is, contiguous to other claims mentioned in said
36 complaint in intervention, and was an attempt to make and hold in violation of the laws of the United States a greater area of the mineral lands of the United States than is, or was, permitted to be appropriated either by an individual or an association of individuals, and deny that said location was contrary to the laws of the United States, for any cause or reason whatever, or at all; they deny that the boundaries of the said claim involving the said northeast quarter of said section 20, were not properly marked upon the ground, or that the same were not marked in any manner so that the same can be readily or easily, or readily or easily traced; they deny that the said plaintiff, E. O. Miller, in furtherance of, and in pursuance of, or in furtherance of, or in pursuance of his design to secure the title to the said northeast quarter of said section 20, or for any purpose whatever, or at all, entered into a conspiracy and collusion, and a concerted design, or a conspiracy, or collusion or a concerted design with one George L. Dineley, whereby the said E. O. Miller procured the said George L. Dineley to make a homestead entry upon said northeast quarter of said section 20, in the United States land office, in Visalia, California, on the 20th day of October, 1896, or in any land office whatever, on any day or date whatever; deny that the said E. O. Miller did at any time whatever in pursuance to any conspiracy, collusion or concerted design whatever, make application to the State of California to have the said northeast quarter of said section 20 selected as State indemnity land, and they
37 deny that the said E. O. Miller did, at any time whatever, in pursuance to any conspiracy, collusion or concerted design, or at all, procure one Earnest L. Smith, to make application to purchase said land as such State indemnity selection, or that he did at any time whatever in pursuance of any conspiracy, collusion or concerted design whatever, secure the abandonment and relinquishment of the said State indemnity selection.

VII.

They deny that all of the said acts, or any of the acts upon the part of the said plaintiff, E. O. Miller, or upon the part of the other persons named in said complaint in intervention, as set out and alleged in said complaint in intervention, were, are and constitute, or were, or are, or constitute fraud against the said intervenor, or against the United States.

Wherefore, these plaintiffs pray that intervenor take nothing by

his complaint in intervention herein, and that they have their costs in this behalf expended.

N. C. COLDWELL,
L. L. CORY,
M. K. HARRIS,
Attorneys for Plaintiffs.

(Duly verified.)

Service of the above answer is hereby admitted this 26 day of May, 1899.

E. O. LARKINS,
U. T. CLOTFELTER, &
W. S. BADGER,
Attorney- for Intervenor.

(Endorsed:) Filed May 26, 1899. G. W. Cartwright, clerk.

38 *Findings.*

(Title of Court and Cause.)

This cause having been called regularly for trial before the court, sitting without a jury, a jury trial having been expressly waived by stipulation of the parties made in open court and entered upon the minutes, M. K. Harris, Esq., L. L. Cory Esq., Frank H. Short, Esq., N. C. Coldwell, Esq. and J. A. Hannah, Esq. appeared as attorneys for the plaintiffs; and W. R. McQuiddy, Esq., W. H. Metson, Esq., S. J. Hinds, Esq. and Messrs. Austin & Jones appeared as attorneys for the defendants A. Y. Chrisman and H. T. Chrisman; and W. S. Badger, Esq. and U. T. Clotfelter, Esq. appeared as attorneys for J. W. Fewel, intervenor herein; and said action was dismissed as against the defendants John Doe, Richard Roe, Mary Doe and Susan Stiles.

Evidence both oral and documentary was offered and introduced by and in behalf of the said plaintiffs and by and in behalf of the said defendants, A. Y. Chrisman and H. T. Chrisman, and by and in behalf of the said J. W. Fewel, intervenor; and the court having heard the proofs of the said parties and considered the same, and the records and papers in the cause, and the arguments of the respective attorneys thereon, and the cause having been submitted to the court for its decision, the court now finds the following facts:

I.

39 That the plaintiff, The Home Oil Company, is a corporation duly organized and existing and doing business under the laws of the State of California.

II.

That the plaintiff E. O. Miller is the owner of all that certain piece and parcel of land situate in the county of Fresno, State of

California and more particularly described as follows, to-wit: Commencing at a stake and pile of rocks placed at the quarter section corner on the northern boundary line of section 20, in township 19 south, range 15 east, Mt. Diablo base and meridian, and running thence east on the section line 40 chains to the northeast corner of said section 20, thence running south on the east line of said section 20,40 chains to a stake at quarter section corner, thence west 40 chains to the legal center of said section 20, thence north 40 chains to the place of beginning, being the northeast quarter of section 20, in township 19 south, range 15 east, Mt. Diablo base and meridian.

III.

That the plaintiff The Home Oil Company is the lessee of all said pieces and parcels of land under the title of the plaintiff E. O. Miller and at the commencement of this action was, ever since has been and is now in the actual possession of the same, and of every part thereof.

IV.

That the said defendant A. Y. Chrisman claims an estate
40 and interest adverse to the said plaintiffs in that part of said piece and parcel of land described as follows: the south half of the southwest quarter of said northeast quarter; and the said defendant H. T. Chrisman claims an estate and interest adverse to the plaintiffs in that part of said piece and parcel of land described as follows: the south half of the southeast quarter thereof.

V.

That the claim of the said defendant A. Y. Chrisman is without any right whatever, and that said defendant A. Y. Chrisman has not any estate, right title or interest whatever in said land or premises, or in or to any part thereof; and that the claim of the said defendant H. T. Chrisman is without any right whatever, and that said defendant H. T. Chrisman has not any estate, right, title, or interest whatever in and to said land or premises or any part thereof.

VI.

That on the 31st day of December, 1896, the said northeast quarter of said section 20, in township 19 south, range 15 east, Mount Diablo base & meridian, was a portion of the public domain of the United States, open to exploration and location for mining purposes under the laws of the United States.

VII.

That the said tract of land was then, and at all times since has been, and now is unfit for agricultural, timber culture, or for
41 grazing purposes, and was on said 31st day of December, 1896, and at all times since that date has been and now is

more valuable for mining purposes than for any other purpose whatever; and that said land then was, ever since has been and now is chiefly valuable for the petroleum and other oils contained therein.

VIII.

That on the 31st day of December, 1896, J. A. Hannah, E. O. Miller, W. F. Hall, D. G. Overall, L. E. Hall, Harry Levinson, R. B. Biddle and Charles H. Smith, and each of them, were then and there citizens of the United States, over the age of 21 years; and the said parties did, on said 31st day of December, 1896, as an association of persons, make a mineral location upon all of said northeast quarter of said section 20, by then and there posting upon said land so claimed by them a notice containing a description of the land so claimed by them, and the names of them the said locators, and by then and there marking their said location on the ground so that the boundaries thereof could be readily traced; which said notice so posted by said locators was thereafter, to-wit: on the 5th day of January, 1897, duly recorded in volume "K" of Mining Claims, at page 445, records of the county of Fresno, State of California.

IX.

That on the 31st day of July, one thousand eight hundred and ninety-seven, the said J. A. Hannah, W. F. Hall, D. G. Over-
42 all, Harry Levinson, Charles H. Smith, L. E. Hall and R. B. Biddle, for a good and valuable consideration, granted, bargained, sold, conveyed and confirmed unto the plaintiff E. O. Miller, all their right, title, interest, estate and ownership in and to said northeast quarter of said section 20, and all their right, title, interest, estate and ownership in, under, or by virtue of said mineral location so made on the 31st day of December, 1896, and the said E. O. Miller did thereafter, to-wit: on the 17th day of September, 1897, for a good and valuable consideration, lease unto one Frank Barrett, of the county of Fresno, State of California, for a period of ten years from and after the date of said lease, all of said described property, for the purposes of digging, boring and excavating for petroleum and other fluid products, and said Frank Barrett thereupon went into possession of all of said property under and by virtue of the terms of said lease; and thereafter, on the 17th day of September, 1897, the said Frank Barrett, for a good and valuable consideration, did assign, transfer and set over said lease and all the right, title and interest thereunder granted to him, to the plaintiff Home Oil Company; and the plaintiff Home Oil Company thereupon went into the immediate possession of all of said property, under and by virtue of the terms of said lease, and ever since has been and now is in the exclusive possession of all of the same and of every part thereof.

43 X.

That immediately after going into possession of said northeast quarter of said section 20, the said plaintiff, Home Oil Company, commenced digging, boring and excavating thereon for petroleum and other fluid products, and has expended in such work the sum of more than thirty thousand dollars, and by means of such digging, boring and excavating discovered large quantities of petroleum therein, and there now exists, and did at the commencement of this action, wells of great depth, sunk and excavated upon said property by said Home Oil Company, from which there is a daily flow of large quantities of petroleum of great value.

XI.

That ever since the 17th day of September, 1897, the said plaintiff, Home Oil Company, has been and is now in the sole and exclusive possession of all of said real property and engaged in working, developing and mining the same and extracting petroleum and other fluid products therefrom.

XII.

That on the 1st day of January, 1897, the said northeast quarter of section 20, in township 19 south, range 15 east, Mount Diablo base and meridian, in the county of Fresno, State of California, was not open to exploration and location, or exploration or location for mining purposes under the laws of the United States.

44 XIII.

That on the 1st day of January, 1897, the defendant A. Y. Chrisman was a citizen of the United States, over the age of 21 years, and did enter upon that portion of said northeast quarter of said section 20 described as follows, to wit: bounded by a line commencing at the center of said section 20, running thence north 40 rods, thence east 80 rods, thence south 40 rods, thence west 80 rods to the place of beginning, and did then post upon said part of said section 20 a notice containing a description of said part of said northeast quarter of said section 20, and that he claimed the said land for mining purposes, under the laws of the United States of America, and such notice was signed by said A. Y. Chrisman, and said defendant did on said date mark the boundaries of said portion of said land so that the same could be readily traced.

XIV.

That on the 1st day of January, 1897, H. T. Chrisman was a citizen of the United States, over the age of 21 years, and did on said day enter upon that part of said northeast quarter of said section 20, as follows to-wit: bounded by a line commencing at the south-

east corner of the northeast quarter of said section 20, running thence north 40 rods, thence west 80 rods, thence south 40 rods, thence east 80 rods to the place of beginning, and did then post upon said part of said section 20 a notice containing a de-
45 scription of said part of said northeast quarter of said section 20, and that the claimed the said land for mining purposes under the laws of the United States of America, and such notice was signed by the said H. T. Chrisman, and said defendant did on said date mark the boundaries of said portion of said land so that the same could be readily traced.

XV.

That said defendant A. Y. Chrisman never at any time discovered a seepage of petroleum or other mineral oil upon said land or any part thereof, and the defendant H. T. Chrisman never discovered a seepage of petroleum or other mineral oil upon said land or upon any part thereof, and that the only discovery of petroleum or any other fluid produce upon said lands or upon any part thereof is the discovery made by the plaintiff Home Oil Company as in these findings before stated.

XVI.

That on the 31st day of December, 1896, and for a long time prior thereto the said section 20 had been and ever since has been and is now a part of the public domain of the United States.

XVII.

That on the said 1st day of January, 1897 no part of the said northeast quarter of section 20 was vacant, public mineral land or open to exploration or location for mining purposes, but on the contrary the whole of said northeast quarter of said section 20 was then in the possession of J. A. Hannah, E. O. Miller, W. F.
46 Hall, D. G. Overall, L. E. Hall, Harry Levinson, R. B. Biddle and Charles H. Smith, under and by virtue of their location of said land hereinbefore mentioned.

XVIII.

That the said defendants A. Y. Chrisman and H. T. Chrisman did not make the location for mining purposes hereinbefore mentioned in good faith, and did not nor did either of them enter into the possession thereof or any part of the same for the purpose of working and mining thereon on the 1st day of January, 1897, or upon any other date; and said defendants have not and neither of them has since the first day of January, 1897, or since any date whatever, done and performed upon said land or any part thereof such work and labor or made improvements thereon as is required by the laws of the United States or of the State of California; and

that the said defendants have not been and neither of them has been in the exclusive possession of said tracts of land so claimed by them; and said defendants are not, and neither of them is in the possession of said tracts of land so claimed by them or either of them, or any part thereof; and the said defendants ever since the said 1st day of January, 1897, or since any day whatever or at all have not been nor are they or either of them now entitled to the exclusive or any possession of the tracts of land claimed by them or any part thereof, nor are said defendants entitled, nor is either of them entitled,
47 to the exclusive or any possession whatever of any part of said northeast quarter of said section 20, in township 19 south, range 15 east, Mt. Diablo base & meridian.

XIX.

That the plaintiffs claim and each of the plaintiffs claims to have an interest and estate in the tracts of land claimed by the defendants A. Y. Chrisman and H. T. Chrisman adversely to said defendants; and that said claims of the said plaintiffs and the claims of each of them is not without right, but upon the contrary is with right and is good and valid; and the said plaintiffs have and each of them has an estate, right, title, claim and interest in and to said tracts of land and in and to the whole thereof.

XX.

That on the 14th day of June, 1895, certain persons, viz: Frank Barrett, K. W. Brown, James L. McLean, James E. Campbell, James A. McClurg, Sr., Hart H. Barrett, A. Barieau and J. J. Bright pretended to make upon said northeast quarter of said section 20 in township 19 south, range 15 east, M. D. B. & M. a mineral location, which was called the King Petroleum mining claim, and that subsequently, to-wit: on or about the 24th day of December, 1896, the said persons made, executed and *and* delivered to the Producers & Consumers Oil Company, a corporation, a deed conveying to the said Producers & Consumers Oil Company all the interest, claim and title to the said tract of land which the said persons or
48 any of them had or claimed to have: that on or about the 24th day of December, 1896, the aforesaid corporation the Producers & Consumers Oil Company made, executed and delivered to E. O. Miller, one of the plaintiffs herein, a quitclaim deed conveying and quit-claiming unto the said E. O. Miller all the right, title, claim and interest of said Producers & Consumers Oil Company in and to said northeast quarter of said section 20, and in and to every part thereof; that thereafter, to-wit: on the 31st day of December, 1896, the said E. O. Miller, by his written declaration, abandoned and relinquished and released unto the United States of America all right in and to said tracts of land acquired by him from said Producers & Consumers Oil Company and its grantors.

XXI.

That on the said 14th day of June, 1895, the said Frank Barrett, K. W. Brown, James L. McLean, James E. Campbell, James A. McClurg, Sr., Hart H. Barrett and J. J. Bright were not citizens of the United States, nor were they or either of them qualified to make a mineral location under the laws of the United States and the laws of the State of California, and said persons did not in fact make said mineral location or any mineral location on the said 14th day of June, 1895; and neither said parties nor any of them, nor the said Producers & Consumers Oil Company, nor the said E. O. Miller ever had or held any right, title, interest, claim, possession or
49 right of possession in and to said property or any part thereof under said attempted location or under said deeds of conveyance or under and by virtue of said deeds of conveyance or either of said deeds of conveyance hereinbefore mentioned.

XXII.

That after the execution of the deed of conveyance hereinbefore mentioned by said Frank Barrett, K. W. Brown James L. McLean, James E. Campbell, James A. McClurg, Sr., Hart H. Barrett, A. Barieau and J. J. Bright to the Producers & Consumers Oil Company the said parties and each and all of them abandoned possession of said property and each and every part thereof and all their right, title, interest, claim and demand in and to said property under and by virtue of said pretended mineral location, and that after the execution of said deed of conveyance hereinbefore mentioned by the said Producers & Consumers Oil Company to the said E. O. Miller, and before the 31st day of December, 1896, the said Producers & Consumers Oil Company abandoned possession of said property and each and every part thereof, and abandoned all their right, title, interest, claim, possession and right of possession acquired or claimed under and by virtue of said pretended mining location.

XXIII.

That all the allegations made and contained in paragraphs numbered II, III, IV, III, V and VI of the 3rd further and sepa-
50 rate defense contained in the second amended answer of the said defendants A. Y. Chrisman and H. T. Chrisman, and each and every one of said allegations, are untrue.

XXIV.

That the intervenor J. W. Fewel is not now the owner and has never been the owner of that portion of the land described in plaintiff's complaint as follows, to-wit: The south half of the northwest quarter of the northeast quarter of said section 20, in township 19 south, range 15 east, Mt. Diablo base & meridian. That said inter-

venor claims title thereto against the plaintiff and the whole world, but said claim is without any right or foundation whatever.

XXV.

That on the 22nd day of December, 1898, the said northeast quarter of said section 20, in township 19 south, range 15 east, M. D. B. & M. situate, lying and being in the county of Fresno, State of California, was a portion of the public domain of the United States of America, and the same was then, at all times since has been and now is unfit for agriculture or timber culture or grazing purposes, and was at all times and now is more valuable for mining purposes than for any other purpose whatever.

XXVI.

That on the said 22nd day of December, 1897, the said northeast quarter of said section 20, township 19 south, range 15 east M. D. B. & M. situate, lying and being in the county of Fresno, State
51 of California, was not open to exploration and location for mining purposes under the laws of the United States.

XXVII.

That the said intervenor J. W. Fewel is now and at all times hitherto has been a citizen of the United States of America, and upon the said 22nd day of December, 1898, was over the age of 21 years.

XXVIII.

That the intervenor J. W. Fewel did not on the 22nd day of December, 1898, or upon any date enter upon and locate under and by virtue or in accordance with the laws of the United States and with the laws of the State of California regulating the sale and appropriation of the mineral lands of the United States any portion of said section 20, but on said day said intervenor posted on the south half of the northwest quarter of the northeast quarter of said section 20 a notice of location in writing, which said notice contained a description of the land claimed therein and thereby both by metes and reference to the legal subdivisions of said section 20; the name of the claim; the name of the locator; the date of the location and the purpose for which the claim was located, which said notice was signed by the locator therein named, to-wit: the said intervenor; and that thereafter, to-wit: on or about the 20th day of January, 1899, said intervenor caused a copy of said notice to be recorded in
52 the office of the county recorder of the county of Fresno, State of California, said county being the county in which said mining claim was situated; but said locator did not on said 22nd day of December, 1898, nor upon any day, mark the boundaries of his said claim on the ground so that his boundaries

could be readily and easily traced, nor did said intervenor on said day or on any day mark the boundaries of his said claim in any manner whatever, nor within the time limited by law therefor or at any other time or in any other manner did said intervenor perform work or labor upon said claim to an amount in excess of the sum of ten dollars or in any other amount or at all.

XXIX.

That all the allegations contained in the paragraph marked IV of said complaint in intervention and each and every one of said allegations are untrue.

XXX.

That all the allegations contained in paragraph marked V of said complaint in intervention are and each and every one of said allegation- is untrue.

XXXI.

That the plaintiffs claim an estate and interest in the tract of land last above described adverse to the said intervenor, which said claim is not without right or foundation in law or in equity, nor is said claim fraudulent or void, nor is the same asserted contrary to the laws of the United States of America or the laws of the State of California regulating and controlling the disposition of the
53 public mineral lands of the United States; but, upon the contrary, said claim is with right and is founded in law and in equity and is good and valid and is asserted in conformity with the laws of the United States and the laws of the State of California governing and regulating and controlling the sale and disposition of the public mineral lands of the United States.

XXXII.

That Frank Barrett, Hart H. Barrett, K. W. Brown, Jas. L. McLean, James E. Campbell, James A. McClurg, Sr., A. Barieau and J. J. Bright did not on the 14th day of June, 1895, or on any day whatever, under and in pursuance of the laws of the United States governing the locating and appropriating of the mineral lands of the United States locate the lands and premises described in plaintiff's complaint or any part of said lands and premises as a placer mining claim.

XXXIII.

That said plaintiff E. O. Miller did on the 31st day of December, 1896, make and execute unto the United States what purported to be an abandonment of all his right, title and interest and of all the right, title and interest of his predecessors in and to said northeast quarter of said section 20 to the United States, but said plaintiff

E. O. Miller did not make or execute said pretended abandonment for the purpose of avoiding the necessity of doing and performing the amount of actual labor or assessment work as required by the laws of the United States for the year 1896.

54 XXXIV.

On the 31st day of December, 1896, and about four hours before said pretended abandonment was filed in the office of the county recorder of the county of Fresno, State of California, the said plaintiff E. O. Miller, together with J. A. Hannah, W. F. Hall, D. G. Overall, Harry Levinson, Charles H. Smith, L. E. Hall, and R. B. Biddle located and claimed the northeast quarter of said section 20 as alleged in intervenor's complaint in intervention. That the said plaintiff E. O. Miller, W. G. Dozier, D. G. Overall and other persons did not locate or claim on said day or on any day the said southwest quarter of said section 20, and Harry Levinson, Charles H. Smith, L. E. Hall, Cora E. Miller, Myrtle Hall, J. E. Maxwell and W. G. Dozier, nor did any of said persons, locate and claim on said 31st day of December, 1896, the southeast quarter of said section 20 or any part thereof.

XXXV.

That the location and claim of the said northeast quarter of said section 20, *was* made by the said plaintiff E. O. Miller, J. A. Hannah, W. F. Hall, D. G. Overall, Harry Levinson, Charles H. Smith, L. B. Hall and R. B. Biddle were made in good faith by all of said parties and for the use and benefit of all of said parties and *was* not made at the instigation or request of said plaintiff E. O. Miller, nor for the sole use and benefit or use or benefit of said plaintiff E. O. Miller, nor was said claim and location of said
55 northeast quarter of section 20 made nor was any location made by said parties or any parties for the purpose of enabling the said E. O. Miller to acquire and hold or to acquire or hold a greater area of the mineral lands of the United States than the laws of the United States regulating the appropriation thereof permits an individual or an association of individuals to hold or acquire.

XXXVI.

That the said location made by the said plaintiff E. O. Miller, J. A. Hannah, W. F. Hall, D. G. Overall, Harry Levinson, Charles H. Smith, L. E. Hall, and R. B. Biddle on the said northeast quarter of said section 20 was not made in pursuance of nor in accordance with a conspiracy, or collusion or concerted design upon the part of said locators or any of them to secure and appropriate the said lands or to secure the title thereto by avoiding the requirements of the laws of the United States by any direct conflict or any conflict with or in opposition to the laws of the United States, and that said loca-

tion so made on said northeast quarter of said section 20 on December 21st, 1896, by said parties was not a re-location by the original locators, and was not made at a time when the land included therein was not open to exploration and location under the laws of the United States and of the State of California, and was not premature and invalid and of no force and effect, nor was the same premature
56 nor invalid and of no force or effect in favor of said locators or as against said intervenor, but said location was made in strict conformity to the requirements of the laws of the United States and of the laws of the State of California, and was made at a time when the land included therein was open to exploration and location under the said laws, and was valid and of full force and effect in favor of said locators and against said intervenor, and that the boundaries of the said claim and location involving the said northeast quarter of said section 20 were properly marked upon the ground and were marked in a manner so that the same could and can be readily and easily traced.

XXXVII.

That none of said locations or attempted locations made on December 31st, 1896, was contrary to the laws of the United States for the reason that said location was or is contiguous to other claims mentioned in said complaint in intervention; nor was the same an attempt to make and hold, in violation of the laws of the United States, a greater area of the mineral lands of the United States than is or was permitted to be appropriated either by an individual or an association of individuals.

XXXVIII.

That said plaintiff E. O. Miller did not at any time enter into a conspiracy and collusion and concerted design, or a conspiracy or collusion or concerted design with one George L. Dinely whereby
57 he the said E. O. Miller procured the said George L. Dinely to make a homestead entry upon the said northeast quarter of said section 20, in the United States land office in Visalia, California, on the 20th day of October, 1896, or at any other time or place; and the said E. O. Miller did not at any time whatever, in pursuance of any conspiracy, or collusion or concerted design, nor in furtherance of nor in pursuance of any design to secure title to said northeast quarter of said section 20, make application to the State of California to have the said northeast quarter of said section 20 selected as State indemnity land; nor did the said E. O. Miller at any time whatever, in furtherance of and in pursuance of his design to secure the title to said northeast quarter of said section 20 procure one Ernest L. Smith to make application to purchase the said land as such State indemnity selection, nor at any time whatever in pursuance or furtherance of any conspiracy, collusion, or concerted design whatever, or for the purpose of securing the title to said north-

east quarter secure the abandonment and relinquishment of the said State indemnity selection.

XXXIX.

That none of the acts upon the part of the said plaintiff E. O. Miller, or upon the part of any other person, as the same are set out and alleged in the intervenor's complaint in intervention, are or constitute any fraud against the intervenor or against the United States.

58 As conclusions of law from the foregoing facts, the court now hereby finds and decides

1. That the plaintiff E. O. Miller is the owner of all that piece and parcel of land situate in the county of Fresno, State of California, and particularly described in the complaint on file herein as against the defendants A. Y. Chrisman and H. T. Chrisman, and as against the intevenor J. W. Fewel, and as against all persons claiming or to claim said land or any part thereof, And that the said plaintiff Home Oil Company is the lessee of all of said piece and parcel of land under the title of the plaintiff E. O. Miller, and is entitled to the actual possession of said land and each and every part thereof as against the said defendants A. Y. Chrisman and H. T. Chrisman, or either of them, and as against the said intervenor J. W. Fewel.

2. That the said plaintiffs are entitled to a decree declaring and adjudging that neither of the said defendants A. Y. Chrisman and H. T. Chrisman nor the said intervenor J. W. Fewel has any estate, right, title or interest, or right of possession whatever in and to said land and premises or any part thereof, and forever enjoining and debarring the said defendants A. Y. Chrisman and H. T. Chrisman and the said intervenor J. W. Fewel from asserting any claim in or to said premises or any part thereof adverse to the said plaintiffs or either of them.

3. That the said plaintiffs are entitled to judgment for costs
59 accrued and disbursements made by said plaintiffs by reason of the answer of the said A. Y. Chrisman and H. T. Chrisman contesting plaintiffs' rights in said premises, to be taxed against the said defendants A. Y. Chrisman and H. T. Chrisman; and also a judgment for costs accrued and disbursements made by said plaintiffs by reason of the making and filing of the complaint in intervention herein, to be taxed against the intervenor J. W. Fewel, and judgment is hereby ordered to be entered accordingly.

Dated Fresno, June 24th, 1899.

J. R. WEBB,
Judge of the Superior Court of the County of Fresno, State of California.

(Endorsed:) Filed June 24, 1899. G. W. Cartwright, clerk.

Judgment.

(Title of Court and Cause.)

This cause came on regularly for trial on the 2nd day of May, 1899, M. M. Harris, Esq., L. L. Cory, Esq., F. H. Short, Esq., N. C. Coldwell, Esq., and J. A. Hannah, Esq. appearing as counsel for the plaintiff-, and W. R. McQuiddy, Esq., W. H. Metson, Esq., S. J. Hinds, Esq. and Messrs. Austin & Jones appearing as counsel for defendants A. Y. Chrisman and H. T. Chrisman, and W. S. Badger, Esq. and U. T. Clotfelter, Esq. appearing as counsel for J. W. Fewel, intervenor herein.

A trial by jury having been expressly waived by the counsel for the respective parties by stipulation made in open court and
60 entered upon the minutes, the cause was tried before the court sitting without a jury, whereupon evidence both oral and documentary was offered and introduced for and in behalf of the said plaintiffs, said defendants and of the said intervenor herein, and the evidence being closed the cause was submitted to the court for consideration and decision and after due deliberation thereof and being fully advised in the premises, the court delivers its finding and decision in writing, which is filed, and orders that judgment be entered in accordance therewith.

Wherefore, by reason of the law and of the findings aforesaid, it is by the court ordered, adjudged and decreed, that the plaintiffs have judgment as prayed for in their complaint herein against the defendants and each and all of them, and that all adverse claims of the defendants and each of them, and all persons claiming or to claim said premises or any part *of* thereof through or under said defendants or either of them are hereby adjudged and decreed to be invalid and groundless, and that the plaintiff E. O. Miller, be and he is hereby declared and adjudged to be the true and lawful owner of the land described in the complaint and hereinafter described and every part and parcel thereof, and that his title thereto is adjudged to be quieted against all the claims, demands or pretensions of the said defendants or either of them, and that said defendants be and they hereby are perpetually estopped and enjoined
61 from setting up any claims to said premises or any part thereof, and that it is hereby further ordered, adjudged and decreed that the plaintiff Home Oil Company is the lessee of all of said lands and premises under the control of the said E. O. Miller and is entitled to the actual possession of said lands and premises and the whole thereof, and that all adverse claims of defendants and each of them and of all persons claiming or to claim said premises or any part thereof through or under said defendants or either of them are hereby adjudged and decreed to be invalid and groundless as against the possession and right of possession of the said plaintiff Home Oil Company, and that the said defendants and each of them

and all persons claiming or to claim through said defendants or either of them are hereby perpetually estopped from setting up any claim to said land and premises or any part thereof adverse to the possession and right of possession of the said plaintiff Home Oil Company.

And it is further hereby ordered, adjudged and decreed that the intervenor J. W. Fewel take nothing by his said complaint in intervention herein, and that all adverse claims of the said intervenor and all persons claiming or to claim said premises or any part thereof through said intervenor are hereby adjudged and decreed to be invalid and groundless, and that the plaintiff E. O. Miller be and he is hereby declared and adjudged to be the true and
62 lawful owner of the land described in said complaint in intervention and the whole thereof and hereinafter described, and every part and parcel thereof, and that his title thereto is hereby adjudged to be quieted against all claims, demands or pretensions of the said intervenor J. W. Fewel, and the said intervenor is hereby perpetually estopped from setting up any claims to said premises or any part thereof.

And it is further ordered, adjudged and decreed, that plaintiff Home Oil Company is the lessee of all the lands and real property mentioned and described in the complaint in intervention on file herein, and is entitled to the exclusive possession of all of said land and premises, and that the right and title and right of possession of the said Home Oil Company in and to said premises be and the same hereby are quieted against all claims, demands and pretensions of said intervenor J. W. Fewel, and of all persons claiming or to claim through him and the said intervenor and all persons claiming or to claim through him are hereby perpetually estopped and enjoined from setting up any claim to said premises or any part thereof adverse to the possession and right of possession of the said plaintiff Home Oil Company.

And it is hereby further ordered, adjudged and decreed that the plaintiff do have and recover against the defendants A. Y. Chrisman and H. T. Chrisman his costs herein taxed at — dollars, and that the said plaintiffs do have and recover their costs against the
63 said intervenor J. W. Fewel herein taxed at — dollars; that the land and premises whereof plaintiff E. O. Miller is adjudged and decreed to be the owner and his title thereto quieted as against the adverse claims of the defendants, A. Y. Chrisman and H. T. Chrisman, and whereof the said plaintiff Home Oil Company is adjudged and decreed to be the lessee and entitled to the possession are bounded and described as follows, to-wit: Commencing at a stake and pile of rocks placed at the quarter section corner on the northern boundary line of section 20, in township 19 south, range 15 east M. D. B. & M., thence running east on the section line 40 chains to the northeast corner of said section 20, thence running south, on the eastern line of said section 20, 40 chains to a stake at the quarter section corner, thence west 40 chains to the legal center of said section 20, thence

north 40 chains to the place of beginning, and being the northeast quarter of section 20, in township 19 south, range 15 east, M. D. B. & M. and situated in Fresno county, State of California. That the land and premises whereof plaintiff E. O. Miller is adjudged and decreed to be the owner and his title thereto quieted as against the adverse claims of the intervenor J. W. Fewel, and whereof said plaintiff Home Oil Company is adjudged and decreed to be the lessee and entitled to the possession are bounded and described as follows, to-
wit: the south half of the northwest quarter of the northeast
64 quarter of section 20, township 19 south, range 15 east, M. D. B. & M. and located in Fresno county, State of California.

Dated Fresno, June 24th, 1899.

J. R. WEBB,
Judge of the Superior Court of the County of Fresno, State of California.

(Endorsed:) Judgment. Filed June 24, 1899. G. W. Cartwright, clerk.

(Endorsed:) Judgment roll. Filed this 24th day of June, 1899. G. W. Cartwright, clerk, by A. D. Ewing, deputy clerk.

Minute Order.

(Title of Court and Cause.)

It is ordered by the court that the motion of application to the complaint in intervention be and the same is hereby denied. * * *

Minute Order.

(Title of Court and Cause.)

FRESNO, CALIFORNIA, *May 3rd*, 1899.

* * * It is ordered by the court that the order heretofore made herein, on yesterday, denying the motion and application of J. W. Fewel to file complaint in intervention herein be and the same is hereby vacated and set aside and it is further ordered that J. W. Fewel be and he is hereby allowed to intervene herein and
65 to file his complaint in intervention as of the 2nd day of May * * *

The defendants and intervenor by their counsel move the court for a non-suit, the cause is resisted by respective counsel for the plaintiff and after due consideration thereof the court ordered that the motion for non-suit be and it is hereby denied. * * *

Notice of Intention to Move for a New Trial—Defendants.

(Title of Court and Cause.)

To the above named plaintiffs and N. C. Coldwell, M. K. Harris, L. L. Cory, Frank H. Short, and J. A. Hannah, attorneys for said plaintiffs:

You and each of you will please take notice that the defendants, A. Y. Chrisman and Henry T. Chrisman, in the above entitled action, intend to move the above named court to set aside and vacate the decision of the court heretofore rendered, given and made herein, and to grant a new trial in the above entitled action, upon the following grounds:

1st. Accident and surprise which ordinary prudence could not have guarded against.

2d. Newly discovered evidence material for the defendants herein, which they could not with reasonable diligence have discovered and produced at the trial.

3d. Insufficiency of the evidence to justify the decision of the court in the above entitled cause.

4th. Errors in law occurring at the trial and excepted to by said defendants.

66 5th. That said decision of said court, in the above entitled action, is against law.

Said motion will be made for the causes mentioned in the first and second grounds above specified upon affidavits, and for the causes mentioned in the third, fourth and fifth grounds above specified upon a statement of the case, said affidavits and statement of the case, to be hereafter prepared and served upon you.

Dated July 8th, 1899.

W. R. McQUIDDY,
S. J. HINDS,
REDDY, CAMPBELL & METSON, AND
AUSTIN & JONES,
Attorneys for said Defendants.

Service of above notice of intention to move for a new trial is hereby admitted this 8th day of July, 1899.

N. C. COLDWELL,
L. L. CORY,
F. H. SHORT, AND
M. K. HARRIS,
Attorneys for Plaintiffs.

(Endorsed:) Filed July 8, 1899. G. W. Cartwright, clerk.

Notice of Intention to Move for a New Trial—Intervenor.

(Title of Court and Cause.)

To E. O. Miller and The Home Oil Company, the plaintiffs above named, and to M. K. Harris, N. C. Coldwell, L. L. Cory, Frank H. Short, and J. A. Hannah, attorneys for said plaintiffs:

67 You and each of you will please take notice that the intervenor, J. W. Fewal; above named, intends to move the above entitled court to vacate and set aside the decision and judgment of said court heretofore rendered, given, made and entered in the above entitled action, and to grant a new trial of said above entitled action, and said motion will be made upon the following grounds, to-wit:

I.

Accident and surprise which ordinary prudence could not have guarded against.

II.

Newly discovered evidence material for said intervenor, which he could not with reasonable diligence, have discovered and produced at the trial.

III.

Insufficiency of the evidence to justify the decision of the court in giving judgment for said plaintiffs and against said intervenor.

IV.

Insufficiency of the evidence to justify the decision and findings of fact filed in said cause.

V.

That said decision and judgment of the court is against law.

VI.

Errors in law occurring at the trial and excepted to by said intervenor,

68 Said motion will be made for the causes mentioned and set forth in the first and second above specified grounds, upon affidavits, to be hereafter prepared, served and filed herein, and for the causes mentioned and set forth in the third, fourth, fifth and

sixth above specified grounds, upon a statement of the case to be hereafter prepared, served, settled and filed herein.

Dated July 8th, 1899.

E. O. LARKINS &
U. T. CLOTFELTER AND
W. S. BADGER,
Attorneys for Intervenor.

Service and receipt of copy of foregoing notice of intention to move for new trial admitted this 8th day of July, 1899.

L. L. CORY,
N. C. COLDWELL,
F. H. SHORT,
M. K. HARRIS,
Attorneys for Plaintiffs.

(Endorsed:) Filed July 8, 1899. G. W. Cartwright, clerk.

69 In the Superior Court of the State of California in and for the County of Fresno.

E. O. MILLER and THE HOME OIL COMPANY (a Corporation), Plaintiffs,
vs.
A. Y. CHRISMAN and H. T. CHRISMAN ET AL., Defendants, and J. W. Fewel, Intervenor.

Statement on Motion for a New Trial.

Be it remembered that the above-entitled action came on for trial regularly on the 2nd day of May, 1899, before the court above named, sitting without a jury, a jury trial having been expressly waived by all the parties thereto; N. C. Coldwell, Esq., L. L. Corey, Esq., M. K. Harris, Esq., and F. H. Short, Esq., appeared as counsel for the said plaintiffs, and Austin & Jones, Esqs., S. J. Hinds, Esq., W. R. McQuiddy, Esq., and W. H. Metson, Esq., appeared as counsel for the said defendants A. Y. Chrisman and H. T. Chrisman, and E. O. Larkins, Esq., U. T. Clotfelter, Esq., and W. S. Badger, Esq., appeared as counsel for the intervenor, and all the parties hereto announced themselves ready for trial, and the following proceedings were had and the following evidence was given at the trial, to-wit:

70 Mr. COLDWELL: If the court please, we now offer in evidence location notice, dated December 31st, 1896, and filed for record January 5th, 1897, and recorded in vol. "K" of Mining Claims, at page 445, records of Fresno county, California.

(Objected to by defendant on the ground that the evidence offered is incompetent, irrelevant and immaterial. Objection overruled, to which defendant excepts.)

The offer is as follows:

"*Location Notice.*

"Notice is hereby given that the undersigned, in compliance with the requirements of the Revised Statutes of the United States, have this day located the following described placer mining ground, viz: Commencing at a stake and pile of rocks on which this notice is placed, at quarter section corner, on the northern boundary line of section 20, in township 19 S. range 15 E. M. D. B. & M.; thence running east on the section line 40 chains to the N. E. corner of said section 20; thence running south on the eastern line of said section 20, 40 chains to a stake at quarter section corner; thence west 40 chains to the legal center of said section 20; thence north 40 chains to place of beginning; being the northeast quarter of section 20, township 19 south, range 15 east, M. D. B. & M., and containing eight (8) mining claims of 20 acres each. To be hereafter subdivided according to law, situated in the county of Fresno, State of California.

This claim shall be known as the Visalia group of placer mining claims.

71 Located 31st day of December, 1896.

E. O. MILLER.
W. F. HALL.
L. E. HALL.
R. B. BIDDLE.
J. A. HANNAH.
D. G. OVERALL.
HARRY LEVINSON.
CHAS. H. SMITH.

Endorsed: Location notice N. E. 1–4 sec. 20, T. 19 S. R. 15 E. Dated Dec. 31, 1896. '90. Filed for record at the request of M. K. Harris, Jan. 5, A. D. 1897, 6 min. past 2 o'clock p. m., and recorded in vol. K of Mining Claims, page 445, Fresno county records. W. W. Machen, recorder, by Jno. La Blanc, deputy recorder. Marked Plaintiffs' Exhibit No. 1. Filed May 2nd, 1899. G. W. Cartwright, clerk, by J. S. Pugh, deputy."

E. O. MILLER, one of the plaintiffs sworn on behalf of plaintiffs, testified substantially as follows:

I am one of the plaintiffs in this case; I am, and since the year 1889 or '90, have been acquainted with the northeast quarter of section 20, township 19 south, range 15 east, M. D. B. & M., in Fresno county, California. The land is in the foothills of the Coast range of mountains and is rolling, grassy lands and bald hills; there are a few small rocks, not bigger than a water-bucket, I suppose, and no large rocks on it; there is likewise no brush on the land. You can stand on the east or west side and look practically over the whole

quarter section, thereby getting a good general view of the land; this is and has been the condition of the land ever since I have known it. I was on this land in the forenoon of the 31st of December, 1896. I went there the evening before—on the afternoon
72 of December 30th—in company with W. F. Hall; no other persons went there with us and we stopped at a house at Oil City and there met Captain Barrett, I. F. Poston, and a son of Poston called "Herb" Poston, and a man named Henage; and I think there was a man there named Barieau also. I do not think there was any other person except myself and Hall on this quarter section on the 31st. My purpose in going there was to make a mineral location upon that quarter section of land, and I communicated that intention to W. F. Hall. The first thing that I did that morning after breakfast, I started out quite early in the morning of December 31st, I asked either Capt. Barrett or Judge Poston——

Mr. McQUIDDY: We object to the witness making a statement in this manner in answer to a question of the attorney on the ground that he has not laid the proper foundation to introduce this testimony. It has not been shown here that this land was open to location on that day; it has not been shown that this witness or these men who were with him were competent, were qualified under the law to make such location, so it is incompetent, irrelevant and immaterial to prove any issue in this case.

(Objection. Overruled, defendant excepts.)

Assignment of Error No. 1.

I inquired either from Capt. Barrett or Judge Poston, or someone at the house, where the northwest corner of this quarter section was. They showed me from the house where we were, and I went
73 over there and found some rocks. I gathered up the rocks that were there and erected a rock monument. In the center of that rock pile I placed a stake about 2 feet long upon which there was a board about a foot long and 10 inches wide, and I tacked my location notice on that; that is at the northwest corner of this quarter section, the northwest corner of the northeast quarter.

(Document shown witness and identified by him as a copy of location notice so posted, which notice is dated December 31st, 1896, and purports to locate under the U. S. mining laws all of the northeast quarter of section 20, T. 19 S., R. 15 E. Mt. D. B. & M., claim to be known as the Visalia group of placer mining claims, bearing on its face as the locators the names of J. A. Hannah, E. O. Miller, W. F. Hall, D. G. Overall, L. E. Hall, Harry Levinson, R. B. Biddle and Charles H. Smith, and was filed for record at the request of M. K. Harris January 5, 1897, at 6:02 p. m., and recorded in vol. "K" of Mining Claims, page 445, Fresno county records, marked Plaintiff's Exhibit No. 1.)

After posting this notice on the northwest corner I went east one-half mile to the northeast corner of this quarter section; there I found what I thought was about the right place for a corner and I gathered up some rocks that were there in a pile, erected a rock monument in which I put a stake about 2 feet long and about an inch thick; the rock monument was about 18 inches high and in which I put a stake about two feet long. From that corner I went south half a mile to the southeast corner of this quarter section; there I found what I was satisfied had been a corner pre-
74 viously; I gathered up rocks that were there and I piled them and erected another rock monument about 18 inches high there. I did nothing else at this corner. From there I went west a little piece and then I went diagonally across the quarter section and went back over to the cabin at Oil City where I had stayed the night before. On the north line of this quarter section and on the east and a part of the way on the south line there were some stakes that had been previously put there, but I erected no intermediate monuments because these stakes were already there, marked the boundaries plainly and clearly; these intermediate stakes were pegs, probably five or six inches long, and some probably a foot long, and about 10 or 12 to the half mile. These small stakes were on the lines between the corners established by me. I made no survey of the land and had no surveyor with me, and they appeared to my eye to be on the line; and since that time I have taken a surveyor there and showed him to demonstrate whether or not the monuments I then erected were upon the Government subdivisions and corners. I took the surveyor of Fresno county and showed him the monuments that I erected, and he made a survey and verified it.

I know all of the parties whose names appear on the location notice very well, and all of their names were attached to the notice which I posted at the northwest corner (Plaintiffs' Exhibit 1). I placed them there myself; as for my authority to do so, before I went over there to make this mineral location I talked with W. F. Hall and Mr. Hannah and possibly with Mr. Overall, and they all sig-
75 nified their desire to make the location; as to the other people, Mr. Hall talked to them and made arrangements with them, I did not see them personally.

I am a citizen of the United States. born in the city of Visalia, in the State of California.

On the 31st of December, 1896, this quarter section was not in the possession of any one, and I considered it vacant. It was vacant. There was no one on the premises at the time I was there affixing these stakes. I think from the course I went going around the land and coming over it and the location that I had over at the house where I could have a full view of it, that if they had been there I would certainly have seen them.

In the year 1897 there was considerable work done upon this quarter section, and among other things there was an oil well com-

pleted during that year. I think the work commenced some time in the summer of 1897. There were also some roads built, a derrick erected, oil well casing purchased, a well drilled about 700 feet deep and completed, which yielded and flowed oil during that year; *the value of* work done in 1897 was from $3,000 to $6,000. All of this work was done by the Home Oil Company as my lessees. During the year 1898, the Home Oil Company, as my lessees, bored and completed two oil wells, one about one thousand feet deep, the other between thirteen and fourteen hundred feet deep, erected the necessary derricks, and built more road over to the point of the quarter section where they were to drill these new wells, so that they could haul their machinery and lumber there. These wells
76 were bored and were both successful wells and are now flowing oil. Besides doing other work of the probable value of $20,000 or more. I put the Home Oil Company in possession of that property.

(Document shown witness and identified as a lease from witness to Frank Barrett, dated September 17th, 1897, covering the northeast quarter of section 20, twp. 19 S. R. 15 E. Mt. D. B. &. M., for the period of 10 years, executed by E. O. Miller and Frank Barrett, acknowledged by both parties. Endorsed thereon is an assignment of Frank Barrett to the Home Oil Co., of all his rights therein, executed on the 17th day of September, 1897, which assignment was duly acknowledged. Marked Plaintiffs' Exhibit 2.)

(The foregoing offered in evidence by plaintiff and its introduction objected to on the grounds that the same is immaterial, irrelevant and incompetent, and that the proper foundation has not been laid for its introduction. Objection overruled. Exception.)

Assignment of Error No. 2.

Cross-examination:

Defendants move the court for an order to strike out Plaintiffs' Exhibit 1 on the grounds that the document introduced is not the original and that no reason has been shown why the original has not been produced. Motion is denied and exception.

Assignment of Error No. 3.

The WITNESS: When I went on the land on the 31st of December I had the notices of location already prepared; my recol-
77 lection is that I prepared them in my office in Visalia before I left home. At the same time I prepared notices to file upon the southeast quarter of this same section, and at the same time I prepared notices to be posted on the southwest quarter of the same section. I don't remember all of the names on the notice posted on

the southeast quarter; part of them were the same as part of those people on the northeast quarter.

I think I have been over this land 10 or 12 or 15 times, but only once prior to the 31st day of December, 1896.

I have not a deed in my possession made by Frank Barrett, J. J. Bright, James L. McLean, James A. McClurg and others to the Producers' Oil Company; I have a deed from the Producers' and Consumers' Oil Company to myself.

"This indenture made this 24th day of December, A. D. 1896, between the Producers' and Consumers' Oil Company, a corporation organized and doing business under the laws of the State of California, and having its principal place of business at the city of Fresno, the party of the first part, and E. O. Miller, of Tulare county, State of California, the party of the second part:

Witnesseth: That the said party of the first part for and in consideration of the sum of ten dollars, gold coin of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim unto the said party of the second part and to his
78 heirs and assigns forever, all those certain lots, pieces or parcels of land situate, lying and being in the county of Fresno, State of California, and bounded and particularly described as follows, to-wit: the south half of the northeast quarter of section twenty, township nineteen south, of range fifteen east, M. D. B. & M.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said party of the second part, by its president and secretary thereunto duly authorized, has hereunto set its hand and seal the day and year first above written.

THE PRODUCERS' & CONSUMERS' OIL COMPANY,

[SEAL.] By I. E. POSTON, *President*,
By K. W. BROWN, *Secretary*.

STATE OF CALIFORNIA, } ss:
County of Fresno, }

On this 24th day of December, 1896, before me, M. K. Harris, a notary public, personally appeared I. F. Poston, known to me to be the president, and K. W. Brown, known to me to be the secretary,

of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

Witness my hand and seal.

79 [SEAL.] *M. K. HARRIS,*
Notary Public in and for the County of Fresno,
State of California.

Endorsed: 7638. Deed. Producers' and Consumers' Oil Co., to E. O. Miller. Dated Dec. 24, 1896. Filed for record at the request of M. K. Harris Dec. 31, A. D. 1896, at 2 min. past 3 o'clock p. m. and recorded in vol. 182 of Deeds, page 410. Records of Fresno county, Cal. W. W. Machen, recorder, by Jno. La Blanc, deputy recorder. Marked Defendants' Exhibit No. 1."

The following document was shown witness, identified, offered and read in evidence, viz:

"Know all men by these presents, that I, E. O. Miller, grantee of "the locators of the placer mining claims upon the south half and "northeast quarter of section 20, township 19 south, range 15 east, "M. D. B. & M., in Fresno county, State of California, do hereby "release, abandon and reconvey unto the United States of America, "all right in and to said land acquired under and by virtue of the "location made by any of my grantors as placer mining claims "under the mining laws of the United States, and particularly "under sections No. 2329, No. 2330 and No. 2331 of the Revised "Statutes of the United States.

"Witness, my hand this 29th day of December, 1896.

"(Signed) E. O. MILLER. [SEAL.]

Acknowledged December 29th, 1896, and recorded December 31, 1896, at 4 minutes past 3 o'clock p. m. in vol. "K" of Mining Claims, page 431, Fresno county records.

80 The WITNESS: The occasion of my getting this deed from the Producers' and Consumers' Oil Company was, there was a man named Hall—the Producers' and Consumers' Oil Company had some flowing oil wells on the northwest quarter of section 20. About the month of August, 1896, the Secretary of the Interior decided that oil was not a mineral and could not be located under the mining laws of the United States, an acquaintance of mine by the name of L. E. Hall filed a homestead on the northwest quarter of section 20, upon which the oil wells of the Producers' and Consumers' Oil Company were located. I was acting as attorney for Mr. Hall. Captain Barrett and Judge Harris, representing the Producers' and Consumers' Oil Company, came to Visalia to see me for the purpose of getting Hall to relinquish his homestead on the quarter section that the oil wells were on and give it back to them, and they offered me at that time that if I would give them the

quarter that they were developing, or get Hall, rather, to relinquish that quarter, give them that relinquishment, that they would make a quitclaim deed to the rest of that section, which was then open, unoccupied ground, and which they were not operating. I undertook the proposition to secure the abandonment for them and gave it to them and Hall relinquished his homestead and this quitclaim deed was made to me as a consideration for those services.

I knew that the Producers' and Consumers' Oil Company asserted some claim to the balance of the section, and that they had
81 pretended by the records to make a location there some time in 1896, but I never knew that a valid location was made—certain physical acts are necessary to constitute a valid location. I did not know that any location was in fact made by Barrett and others in 1895, notwithstanding the fact that he made this quitclaim deed to me.

My reason for making the instrument of abandonment (Defendants' Exhibit 2) was that I became convinced that the Producers' and Consumers' Oil Company had abandoned the land; the original locators, if ever they did in fact locate it, made quitclaim deeds to the Producers' and Consumers' Company. The Producers' and Consumers' Company would make nothing by a quitclaim deed to me and delivered me the possession of the land. I was advised—I believe then as I still believe that these conveyances operated simply as an abandonment, they surrendered me the possession and made a quitclaim deed. The abandonment was to me from the Producers' and Consumers' Oil Company. The quitclaim deed I construed as nothing more than an abandonment, regarded it as such. I abandoned to the United States whatever there might be, I wanted to make it clear so there would be no question, I wanted to go as far as I could if they did happen to have any possible right, I wanted to clean it up. I didn't think they had, but my purpose was, if any existed, to revest the title in the Government of the United States so that I could make—so the land would unquestionably be open to location December 31, 1896, myself and my colocators could make a valid mineral location.

82 Q. Didn't you believe on the 31st day of December, 1896, that this land, being oil land, was not subject to location as mineral land?

A. I didn't know. The Secretary had decided on August 27, 1896, that it couldn't be located as mineral land, but I knew that a motion for a revision had been filed in the case and there was strong hopes entertained that the decision might be reversed, as it was afterwards; so I wanted to play both ends of the proposition to be safe.

Q. Well, did you not, yourself, on or about the 15th day of December, 1896, make application to the surveyor-general of the State to purchase the south half of this section for school land?

A. I did.

Q. And request him to make a State selection of it for that purpose?

A. I did. I also prepared the application of Ernest L. Smith to purchase from the State the northeast quarter of section 20, and acted as his attorney in the matter. At the time I put up my notice there was not a stake at the northwest corner. I did not find any stake at the northeast corner of the section, nor at the southeast corner. I put a stake at the northeast corner and made a rock pile at the southeast corner, but put no stake there.

Last Saturday I had these lines surveyed. They had not been surveyed prior to that time since my location was made.

I didn't know at the time of making the location whether or not there were any stakes on the west line because I didn't go over the west line, but I have been there since and I know that there
83 are stakes there. I am satisfied they were put there at the same time those other stakes were because they have the same appearance as to age. They are about the same size, and have all the appearance of being put there about the same time and in the same manner. I never employed anyone to put these stakes upon those lines.

Q. Did you ever make any discovery of oil upon that particular quarter section?

A. I did, through my lessees, the Home Oil Company.

Q. Well, did you prior to the 31st day of December, 1896?

A. I can't say that I did.

Prior to making this location I talked with Mr. Hannah and W. F. Hall, and possibly with Mr. Overall. There was no arrangement between us three in regard to making these locations except that we would go over there and locate this ground for mining purposes. I don't know that there was any specific arrangement about going ahead to develop or to bore for oil, but it was understood that we were to take it for the purpose—for mining ground for the purpose of developing, there were no details entered into at that time. I never talked with Charles H. Smith, L. E. Hall or R. B. Biddle about the matter, nor had any arrangement with them; but, as I told you, I might possibly have talked with Mr. Overall.

My best judgment is that there is no oil well on the south half of the south half of the northeast quarter, the land claimed by A. Y. Chrisman and H. T. Chrisman.

The road that goes up to Oil City, my recollection is, comes
84 along about like this (pointing on diagram of northeast quarter of section 20); that is only my best judgment. The first well bored on the northeast quarter was right there; but the first road that was built, I understand, was built right in here in a little run across here (pointing on diagram to place near northwest corner of northeast quarter of section 20). Captain Barrett built that in 1896 and erected a derrick here in December, 1896, right here that was never used. It was there December 31st, 1896, when I made this location; the derrick was there and the road was there; I didn't see Captain Barrett build it; it was there, and he told me he built it or had it built. The remains are still there; it was blown

down, and the timbers in that derrick are lying on the ground today—were last Saturday. There was no well bored at that derrick. When I took the deed from the Producers' and Consumers' Oil Company I considered that it operated simply as an abandonment, surrender of possession on the part of the company. I didn't consider that they had any title to convey; I didn't consider they got any title from the original locators, as I explained to you a while ago, for the reason that the locators had made quitclaim deeds. I considered that deed simply as an abandonment of their location on that and a surrender of possession; I understand they abandoned it.

The first well was an oil-producing well. The Home Oil Company subsequently built some roads to those derricks where they have the other oil wells. Of course, before they can start in to erect a derrick they have to have a road graded so they can get
85 timbers up to where they want to construct it. The construction of the road was a necessary part of the development. They built a road to every well. There are three oil-producing wells on that quarter section.

I have a deed in my possession made by these locators in this location notice that was made on December 31st, 1896, to me. (Deed produced.) This is the deed from the locators on December 31st, 1896, to me on the northeast quarter of section 20. Deed dated July 31, 1897, from J. A. Hannah, W. F. Hall, D. G. Overall, Harry Levinson, Charles H. Smith, L. E. Hall and R. B. Biddle to E. O. Miller, consideration $10; grant, bargain, sell, convey and confirm, commencing at a stake and pile of rocks at the quarter section corner of the northern boundary line of section twenty in township nineteen south, range fifteen east, M. D. B. & M., thence running east on the section line forty chains to the northeast corner of said section twenty; thence running south on the eastern line of said section twenty forty chains to a stake at quarter section corner; thence west forty chains to the legal center of said section twenty; thence north forty chains to the place of beginning—the northeast quarter of section 20, T. 19 S., R. 15 E. Mt. D. B. & M., in Fresno county, California, and being known as the "Visalia" group of placer mining claims, which mining claims were located by us under the laws of the United States on the 31st day of December, 1896, and a copy of which location notice was recorded in the recorder's office of Fresno county, State of California,
on January 5th, 1897, in Book K of Mining Claims, at page
86 445, records of Fresno county, California. Acknowledged by grantors and filed for record at the request of E. O. Miller October 22nd, 1897, and recorded in vol. "7" of Transfers of Mining Claims, page 135, Fresno county records.

My recollection is that this deed was made on the date it purports to have been made. The consideration expressed in the deed is not the real consideration. Some of them got a good deal more than $10. I paid J. A. Hannah no money consideration; he is my part-

ner; he is equally interested with me in this property, and the conveyance was made to me so that I could conveniently transact the business, and he still owns a half interest with me; he has no written contract. W. F. Hall owns 7–20 of this property now, and I hold it in trust for him to that extent. I paid Hall no money; he does not hold my deed. I gave him a written instrument, however, that shows the nature of his interest.

(Adjournment until 9 a. m. May 3, 1899.)

The COURT: Gentlemen, on hunting up that matter of the right of intervention, and looking into the authorities last night, I have come to the conclusion that my ruling in the matter was perhaps wrong, and that this morning I think I will allow you to file the complaint in intervention the same as if it had been filed yesterday. I will reverse my ruling and let him file it. File your answer when the trial is through with, and consider it as filed now. You may take leave now to file your answer; consider it filed and prepare it and file it at your leisure.

87 (Continuation of cross-examination of the witness E. O. MILLER:)

I think I made that instrument (referring to contract with Hall) some time in the fall of 1897. The consideration mentioned in that instrument was the only consideration which passed between me and Hall; that instrument represents the true consideration. I am not related to Mr. Hall in any way. Mr. Hannah is my brother-in-law, his wife being my sister.

Q. Now, what consideration, if any, passed from you to Harry Levinson for his making this deed?

A. I had no personal arrangement with Harry Levinson; I gave W. F. Hall $100 to pay to Mr. Levinson. I do not know whether that money was ever paid to Mr. Levinson. Mr. Levinson is not related to me.

Q. Now, what consideration, if any, passed from you to L. E. Hall for the making of this deed to you?

A. I gave W. F. Hall $100 to pay to L. E. Hall.

I made no arrangements with L. E. Hall; I had never seen him and agreed with him as to what he should receive. Those arrangements were made by W. F. Hall, or, rather, by me through W. F. Hall. I understand W. F. Hall and L. E. Hall are brothers. I do not know that W. F. Hall paid this money to L. E. Hall, only what he told me.

Q. Well, what consideration now, passed from you to D. G. Overall for his making this deed?

A. None; that was arranged for by W. F. Hall as part of the consideration for me executing this agreement to Hall.

88 Q. Now, did any consideration pass from you to R. B. Biddle for his making this deed?

A. I gave W. F. Hall $100 to pay R. B. Biddle; I do not know of my own knowledge that Hall paid that money, or any part of it, to Biddle.

I remember distinctly the 30th day of December, 1896. It rained in the morning—it rained between 1 o'clock and 3, because I know Mr. Hall and myself got wet going from Coalinga to the oil wells. It rained a little in the fore part of the afternoon at the oil wells and then quit. The character of the surface of the soil there about Oil City is not what I would call sandy; it is more of a clay formation; some small rocks on the hills. There are bald hills on which grass grows in the spring. There is some adobe there; when this soil is wet—I found it to be quite sticky on the 30th because I walked out and the mud would stick to my boots and I would have to scrape it off before walking in the house; each house is provided with an iron rod so you can scrape your feet before you go in the house. When I went up to the northwest corner (of the northeast quarter) on the morning of the 31st, the soil stuck to my feet some but not enough to impede my walking around conveniently, because the sun was shining next morning and it was clear and bright and it had dried up some.

The derrick that I spoke of on this northeast quarter was south and east from the corner where I posted the notice, about 150 or 200 yards in a little run; the northeast corner of section 20 is just east of a rather deep gully that runs northeast and southwest. It
89 is situated on flat land, from which you can look all over almost the entire country around there.

I had never been to the northeast corner of section 20 before that time that I went there on the 31st of December, 1896. When I was at the southeast corner of the northeast quarter of section 20 on the 31st of December, 1896, I did not find any other stake at that corner. I did not see any stake on that day with a notice tacked on it, stake with a board on the end of it with a notice tacked on it. I am positive I saw no such notice there. I think if it had been there within 10 or 15 or 20 feet I would have seen it. I did not put a stake in that corner. I did not find that corner marked at the time I went there. I found a pile of rock there which I told you I re-erected and built up higher. These rocks were laying all within a space of 2 or 3 feet square, some of them might have been on top of the others. I took them and piled them higher; put them up on top of each other and made a pile of rocks.

What I have stated in regard to what I did that day was all that I ever did about marking the boundaries of that quarter section after putting up my notice.

I gave Hall $100 to pay to Charles H. Smith.

Q. Had you made any arrangements with Mr. Smith about the transfer of this property or his interest in it?

A. The arrangement was attended to by Mr. Hall. I never said anything to Mr. Smith about buying him out.

Re-direct examination:

Before I made this location I talked to Mr. Hall about my intention to do so, and I think I talked to Mr. Hannah. I don't
90 think I talked to any one of my co-locators with reference to locating the quarter section with the exception of Mr. W. F. Hall, Mr. Hannah and possibly D. G. Overall. The way I came to put the other names in the locations, Mr. Hall came to me and told me that he had seen them and they were friends of his and they would like to go on the location with us.

As to the work done upon that place, before I made my location on December 31st, 1896, I saw an oil well derrick and I saw some road built up to the derrick. That road connected with the road at or near Oil City, where they bring the machinery up, and went to the derrick. It was probably three or four hundred yards. It was a dirt road, graded like they build roads over there. A derrick was erected there when I was there on December 31st, and had been previously erected.

My attention was specially called to the fact that the deed from the original locators to the Producers' and Consumers' Oil Company, and also the deed from that company to myself, were quitclaim deeds and not grant deeds, shortly after we received it from the Producers' and Consumers' Company. A very few days before I made these locations of December 31st. This abandonment was prepared at Visalia on December 29th, 1896. I sent it to Fresno to Judge Harris to have it recorded; I mailed it to him I think on the night of the 29th, just before I started to Coalinga, where I got next day. The execution of this abandonment and the sending of the abandonment to Judge Harris was preparatory to my mak-
91 ing the location of December 31st, and it was a part of the same transaction.

I knew the president of the Producers' and Consumers' Oil Company, I. F. Poston, and the secretary, K. W. Brown, and the vice-president and manager, Frank Barrett. These gentlemen knew that I was in possession of that property. I think they knew that I had made a lease of the property because they were interested in the company that leased it from me.

As to the knowledge of the work done upon this property, under my lease Capt. Barrett had been there. I have been there in the oil fields with him three or four or five times since the Home Oil Company have been operating. He has been around the wells and seen the derricks. I have been there with Judge Poston half a dozen times. He has seen the wells where they drilled them. They have met and talked about it; been on the land together. Karl Brown has been there right on the quarter section where the wells were being drilled. Since the execution of the deed by the Producers' and Consumers' Oil Company to me they have never to my knowledge done any work upon that quarter section. They have never protested against me or my lessees doing any work on that quarter,

and never to my knowledge have they claimed any possession or right of possession of that quarter section since the execution of those deeds; they have never claimed it to me.

Q. Or to anybody to your knowledge. Now, then, have they ever been in possession of this quarter section, of any part of it,
92 since the execution of this deed to you?

Mr. McQuiddy: If the court please, we are willing to admit that the Producers' and Consumers' Oil Company and the original locators who passed whatever title they may have had to this land to Mr. Miller by these instruments which are now part of the record in this case, have never, since the 1st day of January, 1897, had anything to do with the land or been in possession of it since the 1st day of January, 1897.

Mr. Coldwell: The proposition is whether or not, since the execution of the deed to Miller, they have had anything to do with it—execution of the deed by the Producers' and Consumers'——

Mr. McQuiddy: Yes, we will admit that the Producers' and Consumers' Oil Company, as a company, and its agents and employés, and that the original locators who passed whatever title they may have had to this land to the Producers' Oil Company, none of them have done anything on the land or had anything to do with it since the 24th day of December, 1896, that is, the date of the deed of the Producers' Oil Company to Mr. Miller.

Mr. Coldwell: That is not the proposition.

Mr. Short: That they abandoned whatever rights they may have had to Mr. Miller.

Mr. Coldwell: That is the proposition we want.

The Witness: No one ever made any objection to my possession or my lease to the company, or to my development of it.
93 I am an attorney-at-law, and have been practicing about six or seven years.

J. A. Hannah, sworn for plaintiff-, testified in substance as follows:

I am the J. A. Hannah that is mentioned in the testimony of Mr. Miller; I am an attorney-at-law; I am and at all times mentioned by Mr. Miller in his testimony, was a citizen of the United States.

George L. Hoxie, sworn for plaintiffs, testified in substance as follows:

I am county surveyor of the county of Fresno. I know the northeast quarter of section 20, T. 19 S., R. 15 E.; I was over on that quarter section in March, 1897; I was there the last time on last Saturday, that would be April 29th I think; I was there in company with E. O. Miller, W. F. Hall and Mr. Sanford. Mr. Miller went around over the ground with me and showed me points that he had previously visited. We first went to the mound of rocks across the

ravines from Oil City a short distance, and then up over the hill in an easterly direction, following the line of stakes that was quite plain, to a point that he said was the northeast corner of the section, and thence southerly following the line of stakes to another point that he said was the southeast corner of the northeast quarter and then we went directly to Oil City. The next morning I was shown a stake that was purported to be the southwest corner of the northeast quarter, by Mr. Hall. When we went to the northwest
94 corner of the northeast quarter, Mr. Miller told me that that was where he had posted a notice of location some time previous. And the next morning I went to work to ascertain the position of the monuments, and found them to be the true corners of the northeast quarter of sec. 20, T. 19 S., R. 15 E.

Q. What, if anything, did you find, now, upon the ground between those two corners?

A. It was plainly staked all the way along, and there were rock mounds—I found a number of monuments of the survey that had been made by one Mr. Finley in January, 1896, with his initials; stone monuments with his initials cut in the stone.

Q. Now, then, calling your attention to this pile of rocks, which he had stated to you was the southeast corner as established by him, what did you find that to be?

A. The stakes lead directly to a point both from the west and the north to this corner, and there was a redwood stake there. There had been a well dug and the excavations had covered over any other monuments that might be there. At the southwest corner to which my attention was called by Hall, I found an Oregon pine stake, 3 by 3. It was the same stake as described in Finley's survey, and there was also a mound of rocks there, just a little northeast of the stake, about 3 links. The rocks had been there evidently some time. On the line between the southeast corner and the southwest corner I found two rock monuments of Mr. Finley's with his marks on them, with the correct distance, and I found stakes about an inch and a half square that had evidently been there a long time. I should think there were perhaps three or four of
95 that size, and quite a number of smaller stakes. I platted that ground and have the plat in my possession here. It shows the monuments that I found on the ground, and also shows the oil wells between the west line of the quarter and the oil house, and a road that I crossed, two roads, and some of the ravines. I made an accurate measurement of the west and south line, not of the north and east line, and this plat is made from my notes and is correct. (The map is here offered and admitted in evidence.)

(Insert Plaintiffs' Exhibit III, plat of N. E. ¼ sec. 20, T. 19 S., R. 15 E.)

(Here follows diagram marked p. 95*a*.)

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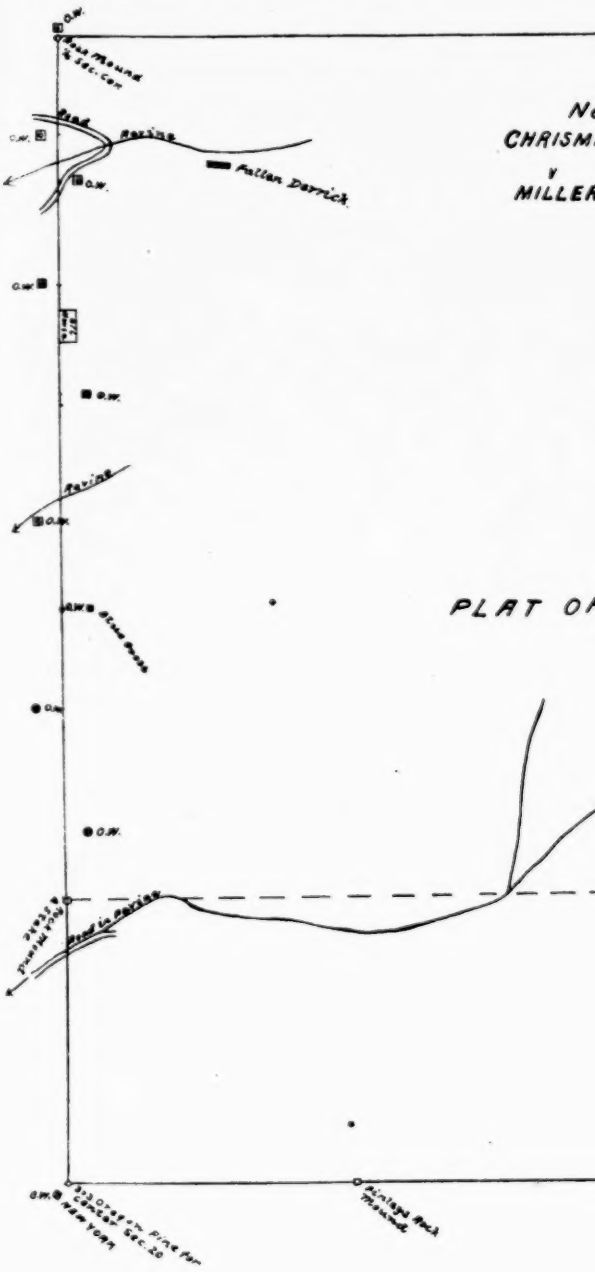
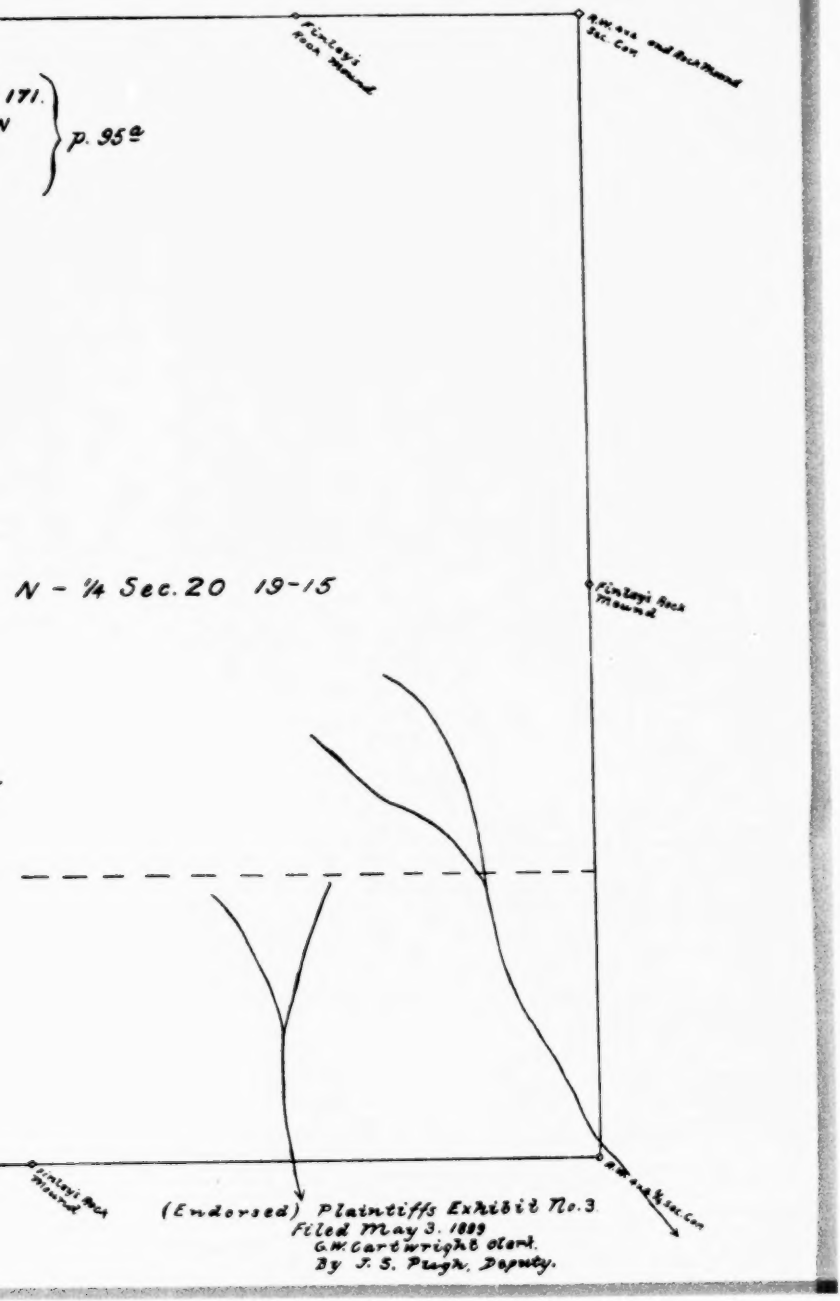



171.
p. 95
N - 1/4 Sec. 20 19-15
(Endorsed) Plaintiffs Exhibit No. 3
Filed May 3. 1889
G.W. Cartwright clerk.
By J. S. Pugh, Deputy.

The letters "O. W." upon the map are intended to represent oil wells, the position of the oil wells that I found upon the quarter section. The words "fallen derrick" near a mark upon this plat is intended to represent the approximate position of the debris that I saw from the derrick—the lumber broken and scattered there.

Cross-examination:

Q. In making these surveys did you use any chain or tape or any instrument for making accurote measurements?

A. I did, sir.

WITNESS (continuing): The character of the ground along the north line of this particular quarter section is quite rough, not so but what it could be accurately chained though. From the north corner of the quarter for about 15 or 20 chains it is not difficult; then you go down into a deep gorge and out again, steep up to a point about 10 or 12 chains west of the northeast corner of the section. Then it is quite smooth again. In other words, you
96 cross one pretty rough ravine on the line. I did not chain that end of it. I found a monument of Mr. Finley's there. I found a monument of Mr. Finley's ten chains east of the northwest corner of the quarter, and I found one ten chains west of the northeast corner of the quarter. These were stone monuments marked with his initials, and representing the numbers of the lots they designated. I commenced my survey at the north quarter corner on the north side of 20. I knew that was the northwest corner of the northeast quarter, because I had occasion to survey a road to Oil City in 1897, and investigated then as to the position of that corner. There was no stake there the last time I was over there. There was a pile of rocks. When I was there in 1897 locating this road, there was a stake and there was a notice, or rather more than one notice at that corner. I paid no attention to them because I was not looking for notices. The character of the land between the northeast corner of the section and the quarter section line south of that, you ascend rather gradually up to the top of the hill. On the top of that hill you have a commanding view of everything below, and then go down that hill quite an incline for a way into a ravine, and there you find the other corner. I have not indicated on this plat all the gullies or gorges I have spoken of. There was a mound of rocks about 40 rods north of the southeast corner of the quarter section (referring to plat). I have drawn a line across here about that distance from the south line of the quarter section which is intended to represent the north half of the south half of the quarter section, north line of the south half of the
97 south half of the northeast quarter, that would be of the two south 20's of that quarter section. There was nothing on that line to identify it last Saturday. I traced that line there. I went to the corner—Mr. Finley had a corner there 20 chains west of the southeast corner of the quarter—and run north 10 chains

and a fraction according to Mr. Finley's notes, although Mr. Finley had never placed a corner at that point. It was simply a corner of these mining claims that I was asked to look for the corner of and found my corner. No line was marked there at all. The only evidence of any corner at that point was a little bit of stake about as big as my finger that was not on the line but was somewhere close about where the corner might or should be to the two twenties. The point would be on the side of the hill, and there was no evidence of any corner there at all. The lumber of the old derrick on that quarter which I have described looked as though it was old lumber and might have been there for several years.

Standing at the northwest corner of the quarter section I could not see my stake or any monument at the northeast corner of the section, because there were hills between, and the corner of the section is just over a little ridge and you can't see it till you get close to it. Standing at the northeast corner you cannot see the southeast corner of the quarter section, there is a hill between the two corners. Standing at the southeast corner and looking west you cannot see the southwest corner or middle of the section because the southeast corner is down in a ravine. Standing at the southwest corner of the northeast quarter, or center of the section, you cannot see the northwest corner of the quarter section; there is a rise, higher ground, between. The corner at the center of the section is in a depression. I have a copy of the Finley plat on file in the recorder's office. This is a plot of the whole section. (Here copy of plat is placed in evidence by defendant, marked Defendant's Exhibit No. 5.)

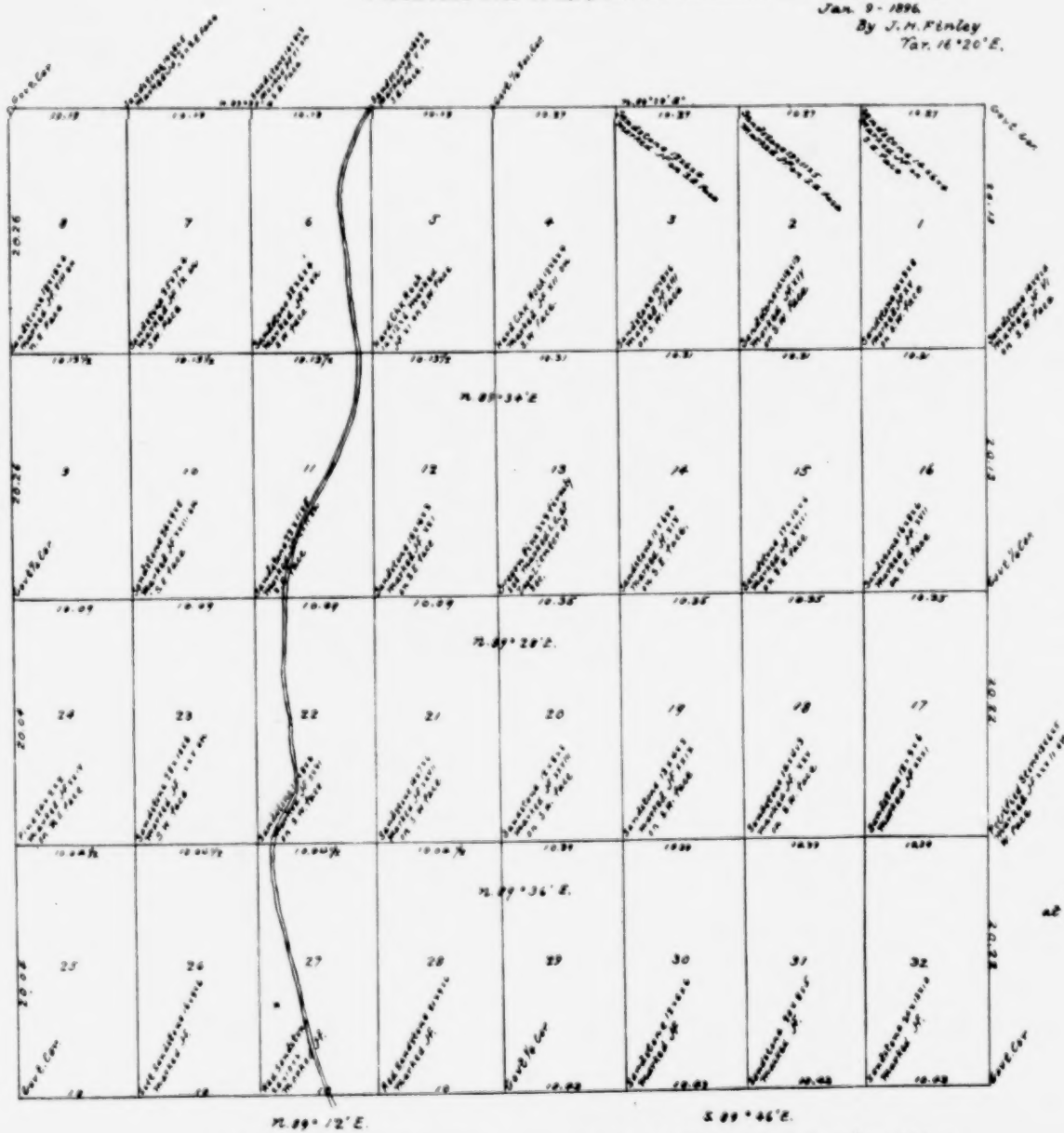
98

(Here insert copy of said plat.)

(Here follows diagram marked p. 98a.)

Sec. 20 19 - 15

Subdivided into 20 acre lots for Producers & Consumers Oil Co.
Jan. 9 - 1896.
By J. H. Finley
Var. 16° 20' E.



Note. Interior Corners set by Measurements East & West and not by intersection.
No interior North or South lines run. Chain measure or astronomic.

Survey No 56

Plat of Section 20 T 19 S. R. 15 E. M. D. B. & M.
Subdivided into 20 Acre Lots for the
Producers & Consumers Oil Company (Incorporated)
Survey Completed January 9th 1896.
By J. H. Finley Licensed Surveyor
Selma Cal.

(Endorsed) Defendants Exhibit No. 5
Filed May 3 1897
O. M. Cartwright clerk
By J. S. Hyde Deputy

(Record of Survey Fresno Co.)

Ro 171
Chrisman
to
Miller

Filed Mch. 5th 1896
at request of Frank Barrett

The witness, continuing in answer to question of the court, said: At each one of the corners around the quarter I found a monument marking them.

W. F. HALL, sworn for plaintiffs, testified in substance as follows: I am a native born citizen of the United States, of the age of 41 years, and am the same W. F. Hall named as one of the locators of the northeast quarter of section 20, T. 19 S., R. 15 E. I am acquainted with that quarter section and was on a portion of it on the 31st of December, 1896. Part of the time E. O. Miller was with me and part of the time a man named Paul Haunfeldt was with me. I was there in the forenoon of the 31st between seven and eleven or half past eleven. While I was there I put up a monument on the southwest corner of this same northeast quarter—a stake.

Q. At what point?

Mr. McQUIDDY: At this point we object to the testimony of this witness on the ground that it is irrelevant, incompetent and
99 immaterial to prove any of the issues of this case, for the reason that the plaintiffs allege in their complaint that they are the owners of the land; they do not allege at all they have derived it through any of the statutory provisions of the laws of the United States, or the laws of the State of California. Therefore it is incompetent at this time to prove any mineral locations.

Objection overruled and exception.

Assignment of Error No. 4.

A. I erected it at the southwest corner of the northeast quarter, which is the center of the section; I put up a rock monument there probably eighteen inches high; a pile of rocks built up out of small rocks, and put a stake up there. My intention in making that monument—my idea was to make a mineral location on that quarter section in connection with E. O. Miller, the plaintiff in this case, and the other parties named as locators on that notice. I am acquainted with those persons. Prior to the time I erected this monument I had talked the matter over with them; it was an agreement that land should be located. I don't know that I could repeat just exactly the conversation that took place, but the purport of it was that I had gone to those friends of mine—they were all friends of mine—and told them that I wanted to be in—wanted to locate some land over there, and I wanted to know if they wanted me to locate them—told them what the conditions were, and they did, they said they did. That was practically what was done, that
100 they wanted to be located with me on the land. Mr. Miller went over there with me. (Paper handed to witness.) I think that is the notice I refer to. On December 30th and 31st, 1896, when I was there—all these parties resided at Visalia where I resided at the time—I did not find any one in possession or any evidence upon the ground or in the vicinity of anyone being in

possession of this northeast quarter. I was there on the 29th of April, 1899, with Geo. L. Hoxie, the surveyor, and Mr. Miller, and another gentleman called Sandy. I went to one corner that I had originally put a monument on and waited for Mr. Hoxie to come; I went and stood there. He chained up to us. It was the center of the section. After Mr. Hoxie chained up to it I said "This is the monument I put up there."

Cross-examination:

I was on that land prior to the 30th of December, 1896. I don't think I could tell the month; I was there frequently, was interested over there, and Mr. Lavelle and myself were interested in a gypsum proposition there. The gypsum claims were not on the northeast quarter of 20, but we thought it was at that time, but found out afterwards it was on 21. At that time I knew where part of the quarter section corners of this northeast quarter were. I had been to the center of the section prior to my going there. There was a stake there at the center, and a stake was there on the 31st of December, 1896. I spoke to the parties named on the notice of location about making location. I think I told Harry Levinson that I was going to file on the northeast quarter and that I wanted to use his name as a locator on that quarter. As to the conversation exactly, I don't remember.

101

Q. Well, now, I will ask you, when you were over there on the 31st of December, 1896, did you not put up some other notices besides on the northeast quarter?

Objected to as irrelevant and immaterial and not proper cross-examination. Objection sustained and exception.

Assignment of Error No. 5.

The WITNESS: On the morning of the 31st of December, 1896, after I started out to make this location I first went on some land other than the northeast quarter of 20, went to the middle of the west line thereof.

Q. What did you do there?

Objected to on the ground that it is irrelevant and immaterial. Objection sustained and exception.

Assignment of Error No. 6.

Q. Did you post a notice in the middle of the section, at the corner common to all four quarters?

A. A man by the name of Haunfeldt went with me to the southwest corner of the quarter section. I never put up any notice on the northeast corner. I put a monument at the center of the section, the corner there common to all four quarters of the section; put a monument there up on the northeast quarter.

The COURT: I say, as relating to this corner he may answer, but if he did anything at that corner of the quarter section, which as I understand is a corner common to the four quarters, if he did
102 anything relating to any other quarter he can't answer it. Exception.

Assignment of Error No. 7.

The WITNESS: I don't know whether or not any of the other parties except Mr. Miller and myself ever saw the location notice or not; if I showed it to them I do not remember it now. There was no agreement between us that they would pay their proportion of any expense that might be incurred in locating and developing this land for mineral purposes. The conditions were just these: that I would locate them on the land, and the first cost was nominal, amounted to nothing practically, I would settle that, and if we had assessments later I could call upon them for their proportional part of the assessments later. They said all right.

If my brother-in-law, Ernest L. Smith, had at that time made application to purchase this land I presume I knew it; I remember the circumstance and presume I talked the matter of making these applications to purchase these lands over with Mr. Miller and Mr. Hannah. It may have been agreed between us that Mr. Smith should make application to the State to purchase this particular quarter section.

Q. Didn't you know at the time this location was made upon the northeast quarter that Mr. Miller then had in his possession a deed from the Producers' and Consumers' Oil Company to himself conveying all interest that that company had in this particular quarter section of land?

A. If Mr. Miller had—now as to dates I can't tell you. I
103 presume I knew it, no doubt but what I knew it at the time; I don't know, I can't say as to the dates. If Mr. Miller had anything of the kind no doubt I knew it at the time. Presumably I had some interest in this quarter section of land on the 26th day of December, 1896, the date of the deed from the Producers' and Consumers' Oil Company to Mr. Miller. I think it is a fact that on the 29th day of December, 1896, the day before we went to Oil City, that Mr. Miller agreed that he would make an abandonment of any interest he might have in this land that came to him through this Producers' and Consumers' deed. I think I saw the instrument in writing releasing and abandoning all interest that he had in this land to the U. S., and I am sure that I knew of it; I think it was discussed between us at the time that such should be done.

Q. And that was with the intent and purpose so that you could put your mineral locations upon this particular quarter section of land on the 31st day of December, 1896, was it not, Mr. Hall?

A. We filed on that date, yes, sir.

Q. Well, those other things had been done preliminary to that, had they not?

A. The other things, if I understand you, you mean that he had made this abandonment? He had.

(Question read.)

A. Well, I don't know hardly how to answer that.

The COURT: Do you understand that?

A. I don't know whether I do or not.

The COURT:

104 Q. Did you understand at that time that Mr. Miller had released his interest in that to the Government so that you and he could file your mineral claims on that quarter section?

Mr. COLDWELL: If he knew that Miller filed an abandonment?

Mr. HARRIS: We admit that.

Mr. COLDWELL: Of course.

The WITNESS: Well, I don't think I comprehend what you——

The COURT: What was the purpose of Mr. Miller filing that release, did you know?

A. I think so.

Q. Well, what was it?

A. It was to abandon it, I believe, to the Government, the way I understood it.

Q. What I want to know, what was the intent and purpose between you and Mr. Miller of making that abandonment?

Objected to on the ground that it is not cross-examination.

Objection sustained. Exception.

Assignment of Error No. 8.

The WITNESS: I have an interest in this particular piece of land at this time. It was in the forenoon of the 31st of December, 1896, that I was at the middle of section 20. I don't think it had rained that day. It may have rained the day before. I don't think the ground was muddy that morning when I went over to that quarter section. I did not that I remember, see any signs of any other person—tracks of a man or any evidence of any person having been there recently. I think I left the Barrett camp or office
105 about half past 11. I went to Coalinga and thence to Visalia. I think I was up there afterwards during the year 1897. The stake at the middle of this section was intended for 3 by 3, but I don't think it was quite that large. This was the one I found there, not the one I put there at all. I put a stake there. The one I found there I don't think had any marks on it. I don't think there was any rocks or earth piled up around this stake when I went there.

Articles of incorporation of the Home Oil Company, setting forth that a majority of the incorporators are citizens and residents of the State of California; that the name of the corporation shall be the Home Oil Company; that the purposes for which it is formed are to own, buy lease and sell real and personal property, to bore and mine for oil, gas and minerals, to build pipe lines, conduits, refineries and to carry on the general business of producing and refining oil for illuminating, lubricating and other purposes, and the manufacture of fuel from petroleum, and to furnish gas for lighting and other purposes; that the place where the principal business is to be transacted is Fresno City, Fresno county, California; that the term for which it is to exist is fifty years after date of incorporation; that the number of directors shall be five; the names and residences of those who are appointed for the first year; that the amount of the capital stock is $100,000, divided into one hundred shares of the par value of $1000 each; that the amount of capital stock actually sub-
106 scribed is $80,000; by whom it is subscribed and the amount subscribed by each; dated December 12th, 1896, signed and acknowledged by all the subscribers, and filed in the office of the clerk of Fresno county, California, December 15th, 1896, is here offered and received in evidence.

C. A. CANFIELD, sworn for plaintiffs, testified in substance as follows:

I have resided at Coalinga 3 or 4 years, and am a stockholder in the Home Oil Company. I am acquainted with the northeast quarter of section 20 in controversy. On the 31st day of December, 1896, we were operating about 200 feet from the west line of the northeast quarter, and near the northwest corner of the same. I saw E. O. Miller and W. F. Hall on that date; I met them at the office of the Home Oil Company that morning; the office is about 200 feet from the west line of that quarter section. I saw Mr. Miller go to the northwest corner of the northeast quarter of the section on that day and do some work which I afterwards went over and looked at and found to be a location notice. I went over soon after he left the corner and he went towards the northeast corner. I went over to see what he was doing. At the northwest corner he placed a notice of location, or I don't know whether he placed it or someone else. It was there when I got there. I saw Mr. Hall go over there earlier in the morning and come back. When Mr. Miller went over to the northwest corner he had some object in his hand, and when I got there, some ten minutes later, I found a little stake with a board nailed on it with the location notice upon
107 the board; there was also a small rock monument built there. I read the notice and the names upon it; the notice described the northeast quarter of section 20, T. 19, S., R. 15 E., and the names on the same included E. O. Miller, the two Halls, and I think Mr. Overall, and I don't know as I could name the others. I am and since last December have been the manager of the Home

Oil Company, and was over there during all of 1898 and 1897, and am acquainted with the officers and agents of the Producers' and Consumers' Company; the Home Oil Company has been in possession of the land in question during the years 1897 and 1898. The owners of stock in the Home Oil Company are the owners of stock in the Producers' and Consumers' to quite an extent. L. L. Cory is one of the directors of the Producers' and Consumers' Company, and he has been over there where the Home Oil Company was operating at various times during the past two years quite frequently. The Home Oil Company commenced work grading a little piece of land and erecting a derrick some time in the month of July, 1897, on the northeast quarter. That was the first work the company did. The next work the company did was to erect a derrick about 30 feet from the line of the Coalinga Oil Company's ground, dividing line between the two places, and bored a well where they erected that derrick. They struck oil at that well.

During the year 1897 the Home Oil Company expended between five and six thousand dollars on the northeast quarter of section 20.

108 The next work that was done by the Home Oil Company was to erect another derrick and drill a well about fifty feet from the first well. This well was completed. It was commenced about January, 1898. In December, 1897, they erected their derrick there. The first well is a producing well and they are pumping it yet. The second well was completed about January 1st, 1898. I should judge the second well cost them during the year 1898, $8,000, and that well is now in operation. The next work was building roads and erecting another derrick about 500 feet still further south on the line of the same land. They commenced work on this third well I think in May, 1898. It was practically completed about the first of February, 1899. I should judge they spent on this well during the year 1898 in the neighborhood of $12,000.00. This is what is known as the "Blue Goose" well, and is a producing well. In 1898 the Home Oil Company expended about $8,000.00 on one well and the same is in operation now, and in May of the same year commenced work on another well, and completed the same in January, 1899, and expended thereon about $12,000.

There had been work done on the land in question prior to the time that the Home Oil Company did the work mentioned; it was done by Frank Barrett in November or December, 1896, and consisted of road work and the building of a derrick, and was of the value of about $300.00 or $350.00.

I went to the northeast corner and the southeast corner of the quarter section in question on the 2nd day of January, 1897. At the northeast corner there was a stake and a monument of stone

109 and at the southeast corner a monument of stone, each about 18 or twenty inches high; I did not go to the southwest corner at that time, but did in the latter part of January, and found three stone monuments there similar to the other monuments

described. I saw small stakes driven about 20 rods apart on all of the boundary lines of this quarter section. They were placed there by a surveying party in 1896, some seven months I should judge before the 31st of December, 1896. They were short stakes about an inch and a half square and stood out of the ground probably eight inches. I live about 40 rods from the land in question, from which point we could see much of the land, and also worked where we could see parts of it, and up to the time Mr. Miller was there on the 31st of December, 1896, there was no person upon any portion of it to my knowledge. I was on the land very often during the months of September, October, November and December, and saw no evidence of anyone being there. People could have gotten on the quarter section and I not see them. So far as I know there were no other persons on the land on the 31st of December, except Mr. Miller and the parties who went there with him and myself.

Motion that the testimony of the witness in regard to these small stakes that he saw on the lines and testified were there before Mr. Miller made his location, be stricken out on the grounds that it is incompetent, irrelevant and immaterial, does not tend to prove any issue in this case whatever.

Motion denied and exception.

Assignment of Error No. 9.

Cross-examination:

110 I have been acquainted with the northeast quarter of section 20 ever since I have been in that country, and never knew of any discovery of any oil on it prior to the boring of these wells by the Home Oil Company, and never saw any indications that there was oil in that territory.

I know a man named A. Barieau; he had a house on section 20 but I did not see him there on the 30th or 31st of December, 1896; he kept out of sight; I understood he was there, but we did not suppose that he was in camp. The 30th was a pretty cold day and it sprinkled a little that night and was storming some the next day, and on the morning of the 31st I think the ground was somewhat wet on top. When I went over to the corner where I saw this notice stuck up, there was besides this notice on that stake a mound or rocks built around the stake. The stake was driven a little to one side. I had been at or near that corner frequently during the month of December previous to that date. When I was there before, that mound was torn down, scattered about. There was a stake lying there, lying down during that month, but none sitting up on the monument.

I visited the southwest corner of the land in question about the 20th of January. This corner is in sight of my cabin and I can see the stake from my office; there is a hill between—the hill that the Blue Goose well is on—but I can look over it and see the corner;

my house is a little over half a mile from the corner. I did not see any evidence of any work having been done upon this quarter section on the south side, not very far from the southwest
111 corner in the month of January, 1897. There was evidence near the center of the claim on the west of the center where there had been a furrow run and V—probably a couple of hours' time put in with a plow, and V was the only work I saw. I wasn't aware that it was done as work. I don't know who did it. I don't think I left there but three or four times during the year 1897, and then not to be gone over three days. My impression is that I noticed this work first in December, or some time before the year 1897.

None of the improvements or expenditures on the northeast quarter, placed there by the Home Oil Company, have been on the lands claimed by the defendants Chrisman. There have been improvements on these two 20-acre tracts; there is some road built, a derrick there, two houses built and some other buildings placed on the same. I don't know, but suppose Mr. Chrisman put them there.

Re-direct examination:

The probable value of the improvements put on this land by the Home Oil Company, including improvements, wells, tankage, pipes, and everything of that kind, would be, I should judge, between 40 and 50 thousand dollars. The Home Oil Company uses these tanks and other things in its operations on this northeast quarter exclusively for the Home Oil Company. The Blue Goose well is on the southwest 40 of this northeast quarter on the northwest. It is not a fact that the Blue Goose is a little north of the 80 acre line.

112 The plaintiffs offer in evidence the affidavit of I. F. Poston as to labor performed on the land in question during the year 1897.

Objected to on the grounds that it is incompetent, irrelevant and immaterial.

The objection is overruled and exception.

The offer, after the venue, is as follows:

"I. F. Poston, being first duly sworn, deposes and says:

"I am a citizen of the United States, of lawful age, a resident of the county of Fresno, State of California; I know the northeast quarter of section twenty (20), in township nineteen (19) south, range fifteen (15) east, Mount Diablo base and meridian. I further depose and say that since January 1st, 1897, and prior to January 1st, 1898, the Home Oil Company caused work to be done on said northeast quarter for the purpose of developing oil and petroleum thereon; that said work was of a greater value than $800.00, to wit: of the value of about three thousand dollars; that said work was done for the benefit of and at the request of E. O. Miller, the owner of the placer mining claims filed thereon, and consists of excavating ground, building roads, building derrick, buying boring apparatus

and the boring and completing of a successful oil well about seven hundred feet deep."

Signed by I. F. Poston, verified and recorded in the office of the county recorder of Fresno county, Jan. 3, 1898, and marked Plaintiffs' Exhibit No. 4.

Assignment of Error No. 10.

Plaintiffs offer in evidence similar affidavit of the same
113 party of work done upon the same land during the year 1898, fixing the value of the same at $10,000.00, signed and verified and recorded in the same office on the 14th day of December, 1898.

Objected to on the grounds last above specified.

Objection overruled. Exception.

Assignment of Error No. 11.

HARRY LEVINSON, sworn for plaintiffs, testified in substance as follows:

I am, and on the 1st day of January, 1896, was, a citizen of the United States, born in San Francisco.

Cross-examination:

I am one of the parties mention- in this location notice dated Dec. 31st, 1896, upon the northeast quarter of section 20, 19, 15.

D. G. OVERALL, sworn for plaintiffs, testified in substance as follows:

I was born in Texas, July 27th, 1858, and am a citizen of the United States.

Motion to strike out the testimony of the last two witnesses on the ground that it is incompetent, there being no allegation in the complaint that these locators were citizens.

Motion denied. Exception.

Assignment of Error No. 12.

CHAS. H. SMITH, sworn for plaintiffs, testified in substance as follows:

Q. Are you a citizen of the United States?

Objected to on the grounds last above stated.

Objection overruled. Exception.

Assignment of Error No. 13.

A. Yes, sir; born in the State of Ohio in 1871.

It is admitted subject to the objection and exception to the admissibility of the evidence that L. E. Hall and R. B. Biddle were at all times during the year 1896 citizens of the United States.

114

Assignment of Error No. 14.

Plaintiffs rest.

The defendants and intervenor move for a nonsuit upon the ground that it has not been shown that upon the 31st day of December, 1896, the ground claimed in this action by the plaintiffs was at that time vacant, unappropriated Government land and the subject of location by any person whomsoever. Next, it has not been shown that a valid location, if one was attempted, was made by the parties attempting to locate it at that time.

Third, that it has not been shown that at that time the land attempted if any was attempted to be located, was marked upon the ground by monuments or otherwise, in such a manner as to make the boundaries known, or, in other words, that the boundaries were not marked so as to be distinct, the location was not distinctly marked upon the ground.

Next, it is not shown by the plaintiffs that the parties attempting to make the location at the time then knew that there was mineral in the soil attempted to be located within the boundaries of the alleged location, if they were made; in other words, that there was no evidence shown to the court that at this time that the parties attempting to make the location were aware that the ground
115 was mineral in character, and that, of course, is preliminary to a location.

Further, that they have not pleaded their source of title, and that what is not pleaded cannot be cured by evidence. Next, that the alleged locators have not shown, or it has not been shown by the plaintiffs here that the alleged locators conveyed any title which they may have initiated by the attempted filing of a notice or by attempted location of the plaintiffs here.

Next, it has been shown by the parties here that there was some possessory title anterior to the 31st day of December, 1896, and that it was attempted to be abandoned on or about the 29th or 30th day of December, 1896, and that it could be done at that date for no other purpose than to evade the forfeiture laws of the United States and to avoid the performance of the necessary assessment work, and therefore the attempted location by the party then holding the title in order to avoid the assessment work made the attempted location void.

Motion denied. Exception.

Assignment of Error No. 15.

A. BARIEAU, sworn for defendants and intervenor, testified in substance as follows:

My residence has been in San Francisco for about 13 months;

previous to that time I resided in Selma; had resided there since 1878.

I am well acquainted with the northeast quarter of section 20, T. 19 S., R. 15 E. I was on this land in April, 1895, and put a mineral location on it.

(Document shown witness.) That is the notice I put up, I
116 think, or like it, and is about the substance of all the notices I put up at that time. I know part of the persons whose names appear on that notice, and some of them I do not know. I put that notice up on the northeast quarter of section 20 on the east side of the road going up to what is called Oil City. The purpose of posting the notice at that time and place was to take up the land to operate to produce oil—petroleum. At the time I posted the notice I had been over the land in question—very much over the entire northeast quarter, and had discovered indications of petroleum thereon. I made the discovery near the east line of the northeast quarter.

This is a certified copy of the notice I put up.

Defendants offer in evidence a certified copy of location notice made upon the northeast quarter of section 20, T. 19 S., R. 15 E. Located on the 14th day of June, 1895; names of locators, Frank Barrett, K. W. Brown, Jas. L. McLean, James E. Campbell, J. J. Bright, Jas. A. McClurg Sr., Hart H. Barrett and A. Barieau; recorded July 16, 1895, in the recorder's office of Fresno county, and the same was received in evidence.

The WITNESS: At the time this notice was posted there was no mining district in that country that I know of, and there was nobody occupying any portion of the northeast quarter of this section 20, and there was no buildings or structures of any kind or character upon the premises. There had been no work whatever done upon the premises. There was nothing further done until January 2, 1896. I was on the land time and again between the time
117 I posted the notice and January 2, 1896, and no person had entered upon the same or occupied it in the meantime. I was present when the survey was made. At the time the survey was made the land was divided into 20-acre tracts and monuments put up at the corner of every 20 of the northeast quarter. We run the north line of the northeast quarter and every ten chains—I can't bring to mind now exactly how we laid the 20's, which way the 20 was laid off. It was a quarter of a mile one way, ten chains one way and 20 the other, but I think ten chains was laid running the line east and west every ten chains was a monument. Each tract would be 20 chains long and 10 chains wide, but I do not remember whether we laid off the long way north and south or east and west, but I think the 10 chains was laid on the line running east and west, and every 10 chains we placed a monument of stone put in the ground with "J. H. F." as a monogram, and the number on it. At the northeast corner we found a good well marked old Government

corner of stone imbedded in the ground. The southeast corner was a 3 by 3 stake with a stone monument around it. On the line between the northeast and southeast corners we put up a monument of stone with the monogram "J. H. F." and the number on it. On the southerly line of this quarter there was a monument of stone with the monument "J. H. F." and number on it placed every ten chains. At the southwest corner, the center of the section, there was a stake and four little monuments around it marking it plainly and distinctly. On the west line of the quarter we placed a stone
118 monument with the monogram "J. H. F." and number on it 20 chains from either corner. There was a stake at the northwest corner, and Mr. Finley marked it and established a corner there. That survey was made in furtherance of my location of June 14th, 1895, and for the purpose of marking the boundaries of the claim attempted to be located. We also ran a line east and west through the center of the section and placed a stone monument marked as I have stated with the monogram and number every 10 chains. This was done for the purpose of marking every 20-acre tract, but the notice was posted on the quarter section as a whole. I was there during the whole of the year of 1896 up to October. Any of the time when I was over there over the land during the year 1896 I did not see any person doing any work upon the premises. I did none myself and none of my co-locators did any work on these premises. I had a cabin on the northwest quarter and lived there during 1895 and 1896 up to October, and from October was there off and on, over the land, and did not see any buildings, or derrick, or work of any character done on the northeast quarter.

The Finley survey of 1896 covered more land than the northeast quarter.

Q. What lands did it cover?

Objected to on the grounds that it is irrelevant and immaterial.

Objection sustained. Exception; and it is understood that the offer of evidence extends to December 31st, 1896, and January 1st, 1897.

Assignment of Error No. 16.

119 The WITNESS: On the 14th of June, 1895, I was, and at all times subsequent have been a citizen of the United States. I was on the land in question on the 30th day of December, 1896, between two and three o'clock in the afternoon; I first went to the east line of the northeast quarter. It rained some and was blustery and showery and rained some and the soil was a little sticky so that wherever a man went it left his track. The land is adobe and will leave a foot mark very plain after a little rain. I went to the southeast corner and found the stake and put up a location notice for a placer mining claim for the northeast quarter of section 20, T. 19 S., R. 15 E. I saw no footprints or any evidence of any other person

having been there since it had rained. I stayed in my cabin the night of the 30th and went on the land in question again in the forenoon of the 31st. On the 31st in the afternoon my notice of location was still there, and there was no indications of any other person having been at the southeast corner. I noticed nothing except my own footprints. This might have been one or two o'clock in the afternoon and the ground was damp enough to stick a little and left a footprint very plain. I did not see any footprints along the east line, nor going from the southeast corner to the southwest corner and I was particularly looking for some too. I went there for the purpose of looking over this land and went over it in several ways and looked over it very carefully, but did not observe any indications of any person having been there on the 30th or 31st ex-
120 cept myself. I did see some footprints, however, at the southwest corner.

The notice I posted on the southeast corner was on letter size paper tacked on a board and the board put on a stake about two feet above the ground, and was posted so that it could be seen 50 or 100 feet from the corner. I had the notice recorded in the office of the recorder of the San Joaquin mining district.

Standing at the center of section 20 Mr. Canfield's house or office cannot be seen. At that time it was in a gulch so you could not see over either way, on account of the hills all around: the gulch that goes up there is crooked and hides the view from all around.

After the 31st day of December, 1896, I don't remember when I was on the ground again, and after that date I don't remember of ever seeing that notice again.

Cross-examination:

I first went over to the oil country in April, 1895, and posted the location notice on the 14th day of June, 1895. In the first week of January following we started in to make the survey and mark the boundaries under that notice. There was no other notice that I know of posted on or in connection with the northeast quarter of section 20.

We were surveying the land generally and marking it into 20's. We first went around and made the lines and then divided it into 20's afterwards. We first went there in June, 1895, and posted a notice. In Jan-
uary, 1896, in pursuance of that notice we went there with a sur-
121 veyor and sub-divided the land into 20-acre lots and established those monuments. There was no other notice of location posted on or in connection with the northeast quarter of section 20 between the 14th of June, 1895, and the survey in January, 1896, that I know of. I can't remember exactly the corner that we started from to make this survey of the northeast quarter of section 20, but I think it was the northwest corner near Oil City. We run east if I remember right. We didn't first put up a monument on the northwest corner where we started. The lines were run first and then cor-

rected back, a cross line. The monument was the last thing that was done in the survey when all the lines were corrected. During the survey the surveyor put up a corner at the northwest corner, if I remember right, and we marked the corner of each 20 acres in that quarter section. They were all numbered from 1 to 8 and monogramed J. H. F. If I remember right, they were all stone monuments. That work was completed in January, 1896. Each 20 acres was laid out as indicated in the Defendant's Exhibit No. 4, and each 20 was a quarter of a mile long north and south, and one-eighth of a mile east and west. From the time the survey was made I was at my cabin situated about ⅛ of mile south-westerly from the northeast corner of the northwest quarter of section 20, and was there continuously until the month of November, 1896, with the exception of a day or two occasionally. From the latter part of October I was there off and on; I don't remember the time I was there except this particular time in December, and was there on the 30th
122 of December. I am positive there was no work done on that quarter up to January 1st, 1897; that is, work that would have shown, either a road or a derrick. I am positive there was nothing of that kind.

I saw Mr. Miller and Mr. Hall there on the 30th and 31st days of December. On the 30th of December I went over to locate this quarter section, did not advise anybody of my intention, and did not say anything about locating it after I came back.

I saw some indications of oil on this northeast quarter in 1895, in June and frequently since; all through the month of May up to June I did nothing else but prospect around; I was there off and on quite often, crossed in every way. Was close to the east line, close to the southeast corner. The place where I saw the indications of oil is about 10 chains north from the southeast corner, and about 5 or 10 feet inside the section line; it comes out with the water, floats on the water. There is a permanent spring there, especially in the summer when it is hot. The oil runs there in the summer. I know the location because I surveyed it—run the line. There is a spring there and the oil comes out and floats on the water in the summer time when it is hot. In June, 1895, there was a little water with oil and a little oil with the water coming out. It was dripping over a rock about two feet high. There was no pool, it was dripping, just dripping a little water and oil, not much water. It was a narrow gulch. It didn't run down any distance from the point where it dripped in, only may be two or three feet. It was damp for
123 quite a distance, but no water any distance at all, just where the cropping was, the rock cropping. I am not personally acquainted with Jas. L. McLean or Jas. E. Campbell or J. J. Bright; never saw them in my life. I don't know whether I am interested in this northeast quarter now; I think I have, I am not certain.

WILLIAM E. FEARON, sworn for defendants and intervenor, testified in substance as follows:

I am acquainted with Henry Chrisman and A. Y. Chrisman; I know where their claims are on the northeast quarter of section 20; I was there on the 31st of December, 1898; I was going toward Henry Chrisman's claim and met him wheeling a wheelbarrow, and I went along with him to where they were running a tunnel and I went inside the tunnel with him. There were two men working in there running a tunnel; that was on his claim, and we stopped there ten or fifteen minutes and we went off up there on the east side of the hill towards his father's place. I saw two men in there that was wheeling out dirt, black shale, out of the tunnel; besides the dirt I saw a little water and oil in there, a little oil in there mixed with the water. The tunnel was probably about between 15 and 20 feet deep, running in, including the approach to it; the tunnel proper was probably about 14 feet in and about 6 or 7 feet high and four and a half feet wide. I don't think I saw anything else on Henry Chrisman's claim that day; there was a road passing by about 150 feet from the tunnel; there was no buildings there then. From there we went west to A. Y. Chrisman's claim; he had a cabin
124 there probably 12 by 14, and roads running right by it. I have been there since, since that day there have been roads built there on that claim and a derrick.

I know where the New York derrick is; it can't be over 10 or 15 feet from the center of this quarter section, the southwest corner of A. Y. Chrisman's claim; I have been right there at the New York derrick extending close to this corner. I know where Mr. Canfield's office is; I cannot see his office from that corner.

Cross-examination:

When I speak of Henry Chrisman I mean H. T. Chrisman; he is the son and A. Y. Chrisman is the father; Henry Chrisman's claim — on the southeast corner of the northeast quarter of section 20, there are 20 acres in his claim; A. Y. Chrisman's claim is the southwest corner of the northeast quarter of section 20 and there are 20 acres in his claim. There are 20 acres in A. Y. Chrisman's claim. I know it was on the 31st of December that I saw these people working in that tunnel, because I was up there that day and went to work for Mr. McClurg on the 2nd day of January, 1899. I took my father up to Mr. McQuiddy's place that day. I went up there to see about getting work from Mr. McClurg. I didn't have to pass over this Henry Chrisman place to go to Mr. McQuiddy's place. I met Mr. Henry Chrisman there and I walked around with him. I met him between his claim and Mr. McQuiddy's house. He was wheeling a wheelbarrow at the time. He was taking it to the tunnel. I was probably a quarter of a mile from the tunnel when I met Mr. Chrisman. I didn't ask him what
125 he was doing. I found men at work over there on the 31st day of December, 1898. That was the only work that I saw

them doing, at that time there were roads built there. I saw him up there one time, but I couldn't bring to memory when it was that he had a horse and plow and V up there making roads. I couldn't be sure that this tunnel was timbered in any way. I couldn't say whether there was timber or not. I have not been in there since. I don't know when the tunnel was commenced. I don't know where these men are that were at work in it. They were strangers to me. The tunnel was running to the side of the hill. I know what a ledge is; I don't know as I know what a lode is. I know what gypsum is. There was gypsum around where they were digging and running that tunnel. I didn't ask him at all what he was working for around the tunnel. There was a little oil around in the tunnel on the water. The oil was right on the water, and the water in the mouth of the tunnel. A. Y. Chrisman's house was a cabin made out of boards and shakes, just one room; I don't know how many windows; I think about two; I know there was one. They had no shutters, just a window put in there, just an opening in the wall. The house is about 12 by 16, about 8 feet high. There was a stove and stove-pipe in it. I never went to see where the roads I spoke of commenced. It ends on down on the end of their claim. The road I saw that day goes to Coalinga and by there. I don't know what connection that road had with the A. Y. Chrisman road; it connects with the
126 Coalinga road about three or four hundred yards from A. Y. Chrisman's place.

I know where the southeast corner of the northeast quarter of section 20 is, it is right close to that tunnel, I should judge about two or three feet from the mouth of it. That is not a well with water in.

Q. Now, then, the question is, was there a well with water in it there.

A. Well, I couldn't answer that question because I don't know. I didn't see any there, I never looked. I have not been back there since, and was not there before, was never at that corner before.

H. T. Chrisman (one of the defendants), sworn for defendants and intervenor, testified in substance as follows:

I was born in Arkansas and am 23 years old past. I know the northeast quarter of section 20 in controversy here in this case. I know where the Chrisman claims are that are in controversy, here have visited them. I located a claim here on this quarter section. I went there the 31st of December, 1896. When I made the location it was in the morning of the 1st of January, 1897. I was up there the day before, visited the premises there the day before, December 31st, 1896, and made an examination of the two claims; we didn't do anything that day except to inspect them; Mr. McQuiddy. A. Y. Chrisman, my father, and my brother were with me; I don't remember whether the elder Mr. Fearon was there or not. On the morning of January 1st, 1897, Mr. Fearon and my father and Mr.

Lavelle and myself, and I think young Mr. Fearon,
127 left Mr. Lavelle's cabin, which is just north of the south line of the southeast quarter of section 20; I had a location notice with me, and my father had a location notice too, I believe; we followed a general course from Mr. Lavelle's cabin and came around by the middle of the south line here and came around to the southwest corner of the northeast quarter of section 20; there we waited until one o'clock a. m. by the watches, January 1st, 1897, and at one o'clock my father posted his notice just inside of the northeast quarter on the first 20 acres. The southwest corner lays in a little gully. This part of the northeast quarter slopes off to the southwest and there is a gully cuts down through the country 18 or 20 feet deep there and down in this gully is this corner. When my father put up the notice at this corner there was a pile of rocks—stone there, five or six inches high, small rocks, some of them 6 or 8 inches long and 3 or 4 inches thick, probably a dozen or 15 of those piled by a stake there, the stake was a 4 by 4 Oregon pine stake, there was cut on it a quarter mark—1-4—and I forget the letters that were there. My father placed the notice just to the northeast of the corner, a few feet, on the northeast quarter of this section 20 in controversy. When my father finished nailing his notice Mr. Lavelle, Mr. McQuiddy and myself left that morning, taking about the same course we came around on; we came right around back to the southwest corner of my claim, and southwest corner of this 20 acres, it is the middle way between the southeast and southwest corners of the
northeast quarter—middle of the south line of the north-
128 east quarter in controversy here, stopped there and posted my notice just at the corner of my claim, but just to the northeast of it, in my claim, 18 or 20 feet back from the corner, the notice was posted on a board nailed to a stake and the stake stuck in the ground. I remember what the notice was and the date of it and the names that were on the paper, and would be able to state the names. I saw that original notice afterwards but it is not there now, the weather or something destroyed it, it was torn down, blown away or something. I missed the notice a couple or three months after I put it there. I was there along in March—February or March—and the notice was gone. I have never seen it since. I do not know where it is. I had a copy of that notice with me that night, they were exactly alike.

Q. Duplicates exactly alike, in your handwriting, both of them?

A. No, there was one thing different in the two notices; there were three words, three or four words left out of the notice that I kept.

Q. The copy?

A. I thought it was an exact copy at the time, but found afterwards there were three or four words left out of the notice I kept. When the notice was sent back to me I found that there were missing—from Fresno.

Q. These words?

A. Yes, sir; I sent this notice I kept to the recorder's office to be recorded and these three or four words were missing. I know they were in the original notice, because I had seen the notice posted, and the next morning when I was up there I read it carefully to see if it was all correct. Then I found that the copy I had made left
129 out these three words. I afterwards corrected my copy. I made that correction by having Mr. McQuiddy, my attorney, write out the correction, or write out a corrected copy and have that recorded in Fresno. The last time I saw that notice was in March, 1896. I was up there in March and found it gone, that is where I found it gone. It was along in February when I last saw it, some time about the 20th. The first time I saw the notice after I posted it was the morning of the 1st about 9 o'clock. I saw it again that day, and again about the middle of the month. The next time the latter part of January or the first of February. I know that I sent to Fresno a true copy of the notice.

Q. (Handing paper to witness.) You examine that and see if that is the correct copy that you had made by your attorney, or if you recognize that as a correct copy, first identify it, I am not offering it in evidence.

The WITNESS (continuing): I recognize that as the copy I had. I recognize the notice, that is the copy that I kept and sent to Fresno. This last one will show the words that were omitted in the correct copy. The words "northeast quarter" were omitted. I don't remember just where it is. This notice is a correct copy with the mistake corrected.

Said notice was placed in evidence, of which the following is a copy:

Location Notice.

Notice is hereby given that the undersigned, in compliance with the Revised Statutes of the United States, has this day located
130 the following described placer mining ground, viz: Commencing at the southeast corner of section twenty (20), township nineteen (19) south, range fifteen (15) east, M. D. B. & M., running thence north forty (40) rods, thence west eighty (80) rods, thence south forty (40) rods, thence east eighty (80) rods to place of beginning. It being the south ½ of the southeast ¼ of the northeast quarter of sec. twenty (20), township nineteen (19) south, range fifteen (15) east, M. D. B. & M., located for mining purposes, situated in Fresno county, California.

This claim shall be called the Paradise placer mining claim. Located on the 1st day of January, 1897, at one (1) o'clock a. m.

H. T. CHRISMAN.

Witnesses:
THOS. J. McQUIDDY.
M. M. LAVELLE.

Endorsed: 221. Filed for record at the request of H. T. Chrisman, Jan. 9, A. D. 1897, at 2 min. past 8 o'clock, a. m., and recorded in vol. K of mining claims, page 436, Fresno County Records. W. W. Machen, recorder. By Jno. La Blanc, deputy recorder. Marked Defendants' Exhibit No. 6. Filed May 4, 1899. G. W. Cartwright, clerk. By J. S. Pugh, deputy.

The WITNESS: After I had placed the notice upon my claim I left there and went back to Lavelle's cabin and went to bed. I revisited the premises about 9 o'clock on the morning of January 1st, 1897. I brought with me a chain and measured out those claims we had located that night. My father and Mr. Fearon came with me. I came around about the same direction as we came the night before to the southwest corner of the northeast quarter and com-
131 mencing there we chained north 10 chains and there established a monument; we found a stake there and around the stake we piled up a pile of rocks six or eight inches high; then we went back to the southwest corner and chained east 20 chains, found a monument of stone there and also a stake; that stake was near where my notice was; there was quite a monument of rock there; we chained north from there ten chains and put a stake down; coming back to this center place of the south line we chained east from there to the southeast corner of my claim and found a stake there 4 by 4 and a monument of rock. A notice had been posted there a couple or three years before, and had the names of Wilson, Anderson and —— —— on it. I saw a notice west of there about 15 or 18 feet on a stake with a board nailed on it and stuck up in the ground, it had the names of Barieau, Barieau, Barieau, Sides and Bachtold and one other on it. As that monument was very good, a large stake there, we didn't bother it much if any, might have laid a rock or two on it. We chained north from there ten chains and as rocks were very plentiful there we piled up quite a monument there, and as there was no stake there I placed a stake there. Chained west from there and we found that this place that we had chained north to from the center of the south line was right at the place of 20 chains running west from the last monument we made. Running west from that we established a monument around this stake that we had put there and after staking out those claims we went around this section. We surveyed this claim of my father's first and
132 then surveyed mine out. On the east and south and west lines in going around these two twenties we put down intermediate stakes only a short distance apart, in surveying we put those down at the end of the chains, each length between those corners, and besides that we put down some larger stakes, about six, on the south line, intermediate stakes, to two large stakes, south line of both claims, one intermediate stake on the south; and on the north we had some five large stakes along the north line, and five along the south line, with intermediate small stakes, little oak stakes; on the east and west lines we had a lot of our little stakes, nine on the

east line and nine on the west line, and about nine we placed on the dividing line between the claims running north and south; these small stakes stuck out of the ground about 6 or 8 inches, they could be easily seen going along the line easily traced.

After surveying that out we went around the quarter section, the different corners, of the whole quarter section; up on the northwest corner is the first one we came to after surveying there: I found a notice there, a monument and stake in it, but this notice was not in the monument—rock; it was on a stake close to it, couple of feet from it, just one side, this was the notice of Mr. Miller and Overall and others, it was situated just inside of the northeast quarter, not in the monument of rocks, a couple or three feet from it; there was a large monument of rocks, 2 feet through, possibly, and something like 18 inches high. It looked like an old monument. We
133 went easterly from that to the northeast corner and there found a monument of stone in fairly good condition; it did not show any signs of recent building, it might have been rebuilt, stone laid on it; there were some footprints around that monument. We left there and went down to the southeast corner, by it, and went back home to our place.

I was acquainted with the northeast quarter during the year 1896; I know the country around about the northwest corner of the northeast quarter; I know a place where there is some debris of a derrick at this time, was the last time I was there sometime about the first of March; this debris is to the east from the northwest corner, a few hundred feet east and south of the north line of the northeast quarter. In 1896 I was over there looking specially for anything of the kind and I saw no debris there. I never saw a derrick standing there until after the first; I remember what year a derrick was built there, it was in 1897; I know it was in 1897 and not in 1896 because I was right through there several times and didn't see it there, and when I was back there in the spring of 1897 it was built or being completed, looked like it was about completed, that was some time along about in April or May. In December, 1896, I was up around that ground and in a position to observe the spot where I know that the debris now is and there was not any derrick there at that time or debris, I am positive of that; there are several derricks there now, but this debris is well towards the northwest corner of the northeast quarter; I saw that first along in the spring of 1897, the derrick was standing at that time and
134 was the only derrick on that northeast quarter at that time.

I saw Barieau's notice there near the southeast corner of that quarter section on the 31st of December, 1896, about four o'clock in the evening, it is not there now, I last saw it there some time after that, a short time.

During the year 1896 there was not any mining work done on that quarter section that I saw, I looked to see if there was any, I looked over all of the quarter section in controversy and found none.

Q. Well, did you make any search before placing this notice up there for any evidences of mineral, petroleum or oil?

A. It wasn't necessary. As soon as I went there I saw some.

Q. Where did you see it?

A. On the southeast corner of the northeast quarter. On my claim.

Q. Have you ever searched on the claim known as your father's claim, whether there was anything discovered there or not?

A. I have looked over it lots of times but long before that time. There is one place up there where the oil is almost oozing out of the rocks, looks very oily, nearest prospect of oil I have ever seen there. Other minerals I have not seen on it.

Q. Who has been occupying those two twenties since January 1st, 1897?

A. I was right there a good part of January and February along in the spring, and I was on there in the fall at work, and then again in the spring of 1898, or in January and February I was there some, and then in the fall of 1898 I was there twice,
135 three times, and after December 20th I was on there continuously the rest of the year.

Nobody else occupied any portion of it any more than passing over it: I was working on there at that time; my father worked on his claim, both claims; we prepared affidavits for the work done those years and had them recorded. My father was on his claim at different times, afterwards built a house on it and lived in it and I occupied the cabin some. During November and December, 1898, and the first part of 1899 I was occupying those premises, both claims, I was on there with four or five men at work all the time, part of the time on one and part of the time on the other.

Examination of witness by Mr. BADGER, attorney for intervenor:

The WITNESS: I am acquainted with J. W. Fewel, the intervenor in this case; I first saw him on the day before the 22nd of December, 1898, the 21st.

The COURT: Which is his 20?

Mr. BADGER: It is the south half of the northwest quarter of the northeast quarter of section 20, T. 19 S., R. 15 E.

The WITNESS: I was with Mr. Fewel on the 22nd day of December, I believe it was the 22nd, it was right there in December, on the day the location was made by Mr. Fewel; I was with him at the time the location was made, it was in the evening, December 22nd, 1898, some time about 11 o'clock at night. We made six locations that night, but confining myself now to the south half of the northwest quarter of the northeast quarter—we left Mr. Lavelle's
136 cabin that night and went up around by the northeast quarter of the northwest quarter and around there and went over

there to the northwest corner of the northeast quarter; from there we came back around by where the old derrick is and around up over the hill there to the corner, the southeast corner of his claim, to the south half of the northwest quarter of the northeast quarter of section 20, and there we placed this notice at the southeast corner of the south half of the northwest quarter of the northeast quarter of section 20; there was a monument and stake there; with reference to this corner of the claim we posted this notice just a few feet to the northwest of the corner, about four or five feet, such a matter, well inside, the notice was posted on a stake like those others I have described, board on a stake and notice nailed on it. I saw the notice that was posted there. (Certified copy of location notice exhibited to witness—Intervenor's Exhibit 1.) The date and name and name of the claim and description of the land are the same as that posted upon the ground. We didn't go to any other point on this particular claim that night. The next day, in the morning sometime, 10 or 11 o'clock, maybe a little earlier than that, on the 23rd of December, 1898, we came around down by the "Blue Goose" well and onto that corner, the southwest corner, and I pointed that corner out to Mr. Fewel, there was a mark there, a stake about 18 or 20 inches high, an inch and a half stake; I pointed that out to Mr. Fewel and we went right down by it; we went down by the second well of the Home Company's and by their tank house and down by a well
137 and I showed Mr. Fewel the next corner, the northwest corner of the "Boomer" claim, of this claim, there was a stake there. We were around the wells looking around, and then I went back to father's cabin. That covers the four corners of this claim; I have never seen but two stakes on the west line of that claim and those two stakes were at the two corners; on the east line, there was one corner on the east line where there was no stake; that is the northeast corner of the claim; we placed a stake there, and at the southeast corner we posted the notice. At the time this location was made there had been a discovery of oil upon that ground to my knowledge, there had been a well bored there and oil struck in the well.

Cross-examination:

Mr. COLDWELL: We will remember in talking now, when we talk about the "Boomer" claim and "Fewel" claim, we mean this claim you helped Fewel locate that night.

The WITNESS: This Fewel claim is north of my father's claim; it is not the 20 acres immediately north, there is a twenty between. Upon this claim located by Mr. Fewel that night, at that time, there was only one well upon that claim, called the Home Company No. 2, bored by the Home Company. They were working at the well off and on. I went there at 11 o'clock at night because Mr. Fewel asked me to. I located other claims that night. I believe there were three producing wells at that time. I didn't make the six locations, Mr. Fewel made them. There were flowing wells upon

three of them. I was with Mr. Fewel as a witness and to show him these places. Mr. Fewel was living in Visalia at that time.
138 He came up there and I made his acquaintance after he came, a day or two before that. He didn't tell me what he wanted me to go there for, he came up there to lease those claims of ours. The notice of location was put on the southeast corner of the "Boomer" claim, a monument was already there, four rocks, I think. The notice was not put upon these rocks, it was on the stake, four or five feet from the rocks. I didn't know who put those rocks there. From that point I came around to my father's cabin, to the northwest corner of my father's claim.

We did nothing toward locating this "Boomer" claim that night of December 22nd, excepting putting up this notice, I showed him the corner and he drove the stake. Mr. Fewel left the claim with me. I was there next on the "Boomer" claim the next morning at 10 or 11 o'clock, maybe a little before; was with Mr. Fewel.

Q. At what particular point of this "Boomer" claim did you first strike it?

A. We were along the west edge of it, west side; at the southwest and northwest corners we were at the southwest corner first; there I showed Mr. Fewel the southwest corner stake of the "Boomer" claim. There was an inch and a half Oregon pine stake there, I don't know when nor by whom it was put there, it was a surveyor's stake; it was put there for the purpose of marking the corner of the 20 I suppose, because in chaining out that line some time before that it was just ten chains north of my father's northwest
139 corner; from that point we went north on that line until we came close to the next corner and I showed it to him.

I am one of the defendants in this case, am the H. T. Chrisman referred to; I am a son of A. Y. Chrisman; I was upon this northeast quarter in December, 1896, at different times. I was over there some time about the first and along the middle. I was there to inspect the ground, the northeast quarter of section 20, 19—15. I was there alone part of the time and there with my father part of the time and with my brother part of the time; I wanted to inspect it to see if anything had been done on it, if any assessment work had been done; I had heard, had been told there was a location notice placed there in 1895 and that it would become vacant the 31st of December and no assessment work was done and I was there for the purpose of seeing if it had been done or was going to be done.

I saw Mr. Barieau near there on the 31st. At the time I was down at Mr. Lavelle's cabin; not so very far from this place; it is possibly nearly a quarter of a mile where I saw him; he was not on the land when I saw him. When I went there on the afternoon of the 31st of December I saw a notice there posted by Mr. Barieau. It was about 15 or 18 feet from the southeast corner of the northeast quarter. That notice covered this location afterwards made by me on the morning of the first. When we went up there at one o'clock in the morning we went from Mr. Lavelle's cabin on the southeast

quarter across to the northeast quarter, my father made his location first, his was the first location made that night; I don't know
140 that mine was the second because Mr. Fearon and my father and the rest separated from us and we went and made ours the crowd separated then; at one o'clock according to our watches we separated at the southwest corner of my father's claim, just as soon as we nailed up his notice; Mr. Lavelle and Mr. McQuiddy and myself then came back around the way we came, back to the northwest corner of my claim and the three of us located our claim, my father stayed with Mr. Fearon and the rest of the crowd there; we came to the southwest corner of the claim located by me. After that we went back to Mr. Lavelle's cabin. The next morning we again visited the ground for the purpose of surveying it, staking it; my father and the elder Mr. Fearon were with —; we first surveyed my father's claim; we surveyed it with a chain that I made; after getting the two claims surveyed we went around the quarter section to see if anything had been done and see if any location notice had been put up or anything of the kind. It had been somewhat of a custom over there to locate pieces of land in quarter sections, it had been done considerable anyway and we thought the whole quarter might have been located by somebody that night or morning, and we went around to see what had been done in the way of locating. I found a notice at the northwest corner locating the whole quarter section signed by Mr. Miller and others. I first engaged in the oil business at 1 o'clock January 1st, 1897. That was my first experience in the oil business. I had visited the wells a few times. I did not see any other notice there at that corner that morning.
141 I discovered oil there before this time; I was there prospecting; there was a spring of water there oozing out in different places; the first time I became acquainted with it was about the 1st of December, 1896, I saw the spring about twice between the first of December and the first of January, I saw it at that time and on the 31st of December; along the gulch there in several different places water was coming out and two or three places this oil was on it. I was somewhat acquainted with the oil they were getting over there and around there in different places in the mountains. It had considerable resemblance and in fact was that and I called it oil; I did not see much, the pools it was on it covered, as for size of those pools, one of them was three or four feet long, and it had some width, probably a couple of feet, others were smaller; these places were covered with a scum of oil generally; I saw the oil was on the water.

Q. On how much water, the surface of all the water contained in the pools?

A. On some of them it was, some of the smaller ones, and possibly on those, it covered at different times it covered it more than others. The ground was not stained in any way. On some of these ledges the oily stuff was oozing out, it was damp, it was oozing out, oily stuff, out of the ledges that was there. I brought some of the water

and oily stuff down and had Mr. Lavelle test it. Mr. Lavelle is something of a chemist and I wanted to know its constituents, I think I did that the first trip I made there, sometime about the first of December. I brought it out of the pool, not out of
142 the bottom of the pool; didn't dig down into the bottom of the pool; the pool was a couple or three inches deep. I never brought the dirt, I brought the water and oily stuff that was there, the water and oily stuff mixed. I dipped a bottle in and let it run in. I picked the bottle up there, carried it up, or had it in my pockets, I don't remember. It might have been a can I filled up, I don't remember. I don't remember where I picked it up. I picked it up on that day but I don't know what time. I don't know whether it was on the claim or off the claim. I don't know whether it was a sardine or oyster can, I think it was a bottle, but I wouldn't say sure. I wouldn't say that was the first time I was there. I probably said that, but I changed that. That was an immaterial matter and it was simply a little something of my own curiosity I did that. I can't say whether it was the first or second time that I was there; I don't know how far from the pool I got this bottle or can. It might have been a bottle, or something of the kind I had in my pocket. I can't say whether or not I picked up this bottle or can for the express purpose of getting some of this oil. I can't say for what purpose I picked up the bottle or can. This well that had the oil on it was right at the extreme southeast corner of that claim of mine; it run off of it down on 21, run off the northeast quarter of section 20 onto section 21; it was not far from the corner. One of the pools was 10 or 15 or 20 feet from the corner; the springs were along in the gulch and the gulch run within 15 or 20 feet of this corner.

143 A. Y. CHRISMAN (one of defendants), sworn for defendants and intervenor, testified in substance as follows:

I am one of the defendants in this case, am the father of the last witness. I was born in the State of Arkansas. I am acquainted with the two twenties in dispute in this case known as the Chrisman claims, in section 20, northeast quarter of section 20. I am acquainted with that location; I have been over the whole quarter a number of times; I was over that quarter in the year 1895; I don't think I was on the northeast quarter of section 20 in '96 until December of that year. I know there is a derrick at the northwest corner of the northeast quarter of section 20. There was no derrick blown down near the northwest corner of the northeast quarter of section 20 in 1897, not when I was there in the early part of 1897. There was no derrick there in December, 1896. During December, 1896, when I was around there near the northwest corner of the northeast quarter of section 20 (witness is shown spot on diagram where derrick is said to have been and where the debris of derrick is now claimed to be) I did not see any derrick there or any evidence of any derrick; I was there to see anything that might have

been there in the shape of a derrick or work there; that was my business there; that is what I went there for, with that purpose in view. It was some time in the latter part of April, 1897, when I first saw a derrick there or about there, it was just off a little to the southeast of the northwest corner of the northeast quarter in a little bit of a gulch that comes in there.

144 On December 31st, 1896, I visited the two particular twenties claimed by my boy and myself, got there some time about four o'clock in the afternoon; my son and Major McQuiddy and Mr. Lavelle went over there with me. We looked over the ground to see if there was any work being done—if there was any notice had been posted. I found a notice on the southeast corner of the northeast quarter. At or near the corner I found a bit of a monument with a stake in it, and just above the corner, probably 18 or 20 feet, I might say not more than 15 feet, there was a notice there purporting to be posted by Mr. Barieau. We went from there right across the quarter section over to the southwest corner of the northeast quarter, there we found a bit of a monument, stake there at that corner. That corner is just in the head of a little canyon running up from the west, the canyon does, and the corner is situated probably 18 or 20 feet down in the canyon, coming up on the level with the ground around. It would be impossible for me to stand on the porch or around the house of Mr. Canfield and see that corner. I can't tell what other men can do. I couldn't see the corner that far.

Up to December 31st, 1896, during my observations up to the time that I posted the notice I wasn't able to find any mining work that had been done on that quarter section at all, and I went there to look for that thing.

We again visited those two claims about midnight, my son and Mr. McQuiddy and Mr. Lavelle and Mr. Fearon went along with me, if my memory serves me right; we went over to the

145 center corner of the section—southwest corner of the northeast quarter; we stopped until one o'clock and I posted my notice, one o'clock the morning of January 1st, 1897; I had the notice in duplicate, I put one on a board and drove it up in the southwest corner of the northeast quarter—drove a stake up with a board on and the notice tacked on the board; after doing that I sent the other copy to the recorder's office here in Fresno.

(Copy of notice of location of placer mining claim, certified by the recorder of Fresno county, covering the south half of the southwest quarter of the northeast quarter of section 20, township 19 south, range 15 east, Mt. D. B. & M., in Fresno county, California, claim to be known as the "Bee Hive placer mining claim," located January 1st, 1897, at 1 o'clock a. m., signed by A. Y. Chrisman, filed for record January 9th, 1897, and recorded in vol. "K" of mining claims, page 437, Fresno County Records, is offered and received in evidence, and marked Defendants' Exhibit No. 7.)

The WITNESS: After the boy posted the notice there he went up

on the line some 40 or 50 rods east and drove a stake in the ground with his notice on it, posting the filing on the southeast 20 of the south half of the northeast quarter, east of the middle of the south line of the northeast quarter in question.

We next visited those claims about 9 o'clock January 1st, the same morning; we chained off the ground and drove stakes, intermediate stakes between stakes that we found on the ground already,
146 and erected some monuments. My son and Mr. Fearon went up with me the next morning, we came right over to the southwest corner of the northeast quarter; we found the corner, lot of rocks, there had been some piled up, and a stake there, we built that corner up somewhat, and chained north 10 chains, we found a stake there, lot of rocks scattered around and we erected a monument there; we put up some stakes between those two points, they were made of oak wood half an inch or three quarters in diameter, put them four rods apart, they projected about 6 or 8 inches above the top of the ground. After we had finished that last corner we came back to the southwest corner and chained east 20 chains; our measurements came out within about six feet of what seemed to have been an established corner there by someone; we then went over to the southeast corner of the northeast quarter and chained back and we adopted that corner as the division corner between the two of us, the one that had been there before; we straightened it up, left it in good condition, about 18 inches high; besides the rock there was a large stake in the corner, the stake was about an inch and a half or two inches square and about two feet high, counting the rock and stake together, stake about two feet high and rocks up around it came within 5 or 6 inches of the top of the stake. That is a pretty good description of all the corners we made with the exception of the northeast corner of my boy's claim, he put up a mound of rocks there that was two feet high, probably higher than that, with a different stake in it and a piece of board. Between my boy's claim and my claim and between the southwest cor-
147 ner and the middle corner we put stakes every four rods. Then from the middle corner after chaining back, we chained then north ten chains and set down one of our stakes there, and then we went down to my northwest corner and chained up there and then we went over to the northeast corner and chained back again, came back there from the northeast corner and established a corner there and built a mound of rock. We put stakes every four rods between the corner we adopted on the south line and the corner on the north line between our claims. After establishing that corner in the middle of the north line of mine and boy's claim, the 40 acres, we went diagonally across to the northwest corner of the northeast quarter, we went diagonally across from our center corner up to that corner.

The first corner we established was at the southwest corner of my claim; the second corner we established was in the middle of the south line; the third corner we established was on the southeast

corner of my son's claim. We chained from the southeast corner of the northeast quarter back to the center and then we adopted that monument of a stake and rocks at our corner and chained then across north 10 chains and then we built a mound of rocks there and left a stake to run to; then we came back, went to the southeast corner and chained north and established a monument there on the east line, established the northeast corner of my son's claim. After establishing those corners we went across to the northwest corner of
the northeast quarter and looked around there to see what
148 might have been done there. We found a bit of a monument
on the corner and a notice posted there, it purported to be the Miller notice; we went east then to the northeast corner of the section, what had the appearance of being the northeast corner, found a pile of rocks there, mound of rocks, it looked to be an old mound; from there we went south down to the east line of the northeast quarter, down to the southeast corner again.

I have been occupying those two twenties since then, since January 1st, 1897, and my son has been there a portion of the time. I did work there during December, 1897, and during January and February, 1898, and 1899; my son and myself were working on the claims, both of them, during the year 1899, January, our assessment work this year; we did work there during the year 1897, and during the year 1898, both claims, and made affidavits of the work done and sent them in for record. During December, 1898, and the first part of 1899, I was working on both of those claims with my son. I built a house on my claim in November, 1898, and moved into it.

Before placing the notice there, mining location, I made an examination as to the presence of any petroleum or oil on these two claims. Near the east line of the northeast quarter there is a gulch comes down there and there is a little oil seeps out with the water and comes out in that gulch there; in relation to my boy's claim that would be just inside the southeast corner of his claim, would be on his claim. I made a discovery on my claim near the north line,
inside of my claim, in January, 1897, after I had posted the
149 notice; before I posted my notice I noticed strong evidences
of oil there on my claim, black shale cropping out in places.

When I was there again on the 4th of January, 1897, I again saw the Barieau notice, it was then where I first saw it, about 17 or 18 feet from the immediate southeast corner of the northeast quarter.

(No cross-examination.)

THOMAS J. MCQUIDDY, sworn for defendants and intervenor, testified in substance as follows:

MR. COLDWELL: As to the facts constituting the locations of the Chrismans, we don't propose to call any testimony to rebut that. We will stipulate that this witness will testify that the stakes were placed at the time and in the place that the witnesses A. Y. Chris-

man and H. T. Chrisman testify that they were placed, and we will agree that he will testify to the posting of the notices, the Chrisman notices, at the time and place as testified by H. T. Chrisman and A. Y. Chrisman.

The WITNESS: I was in the vicinity of what is known as Oil City in '97 and the latter end of '96. I have known that country since 1889. I have been over the northeast quarter of section 20 several times. In December, 1896, I was in that vicinity; was in that neighborhood on the 31st of December, 1896, and was upon that particular northeast quarter on that day; went diagonally across the quarter section from the southeast corner over to Oil City, coming out in sight of the northwest corner of northeast quarter. On that afternoon I saw at the southeast corner of that quarter a notice there, Mr. Barieau's notice, as we call it; I don't remember
150 any other names except Mr. Barieau's name, A. Barieau. I never saw it after reading it there; I read it at that time.

I never saw any work or evidence of work being done upon that northeast quarter of section 20 up to the 31st of December, 1896, and saw no work going on there on that day; after the 31st day of December, 1896, some time early in 1897, I saw a derrick on that quarter; it was, I would say, three hundred feet, maybe four hundred feet, from the northwest corner of that quarter; that was the first derrick I ever saw erected on that quarter; the course I took in going diagonally across the northeast quarter on the 31st of December, 1896, would take me from where the derrick was afterwards erected perhaps two or three hundred feet; I think my course would have been so that I could have seen it if it had been there at that time; that first derrick that was erected appeared to me to be rather a low derrick, not more than 40 or 50 feet high, the first one I saw there. There was a derrick blown down there since that time, but I am not positive whether it was that derrick or some other one; there have been several derricks built on that quarter since that time.

I was there in that vicinity the greater portion of December, 1896, and saw no work or excavations whatever of any kind upon the northeast quarter in December, 1896. I didn't see any work going on on the northeast quarter. I was there doing assessment work; my assessment work was being done on the southeast quarter, but I had to go up to Oil City for water to water our stock frequently and to get water to use; while there at the watering place we can
151 see the greater portion of the northeast quarter; we can see the west half of it plainest from Oil City, and of the west half we can see the northern portion plainest from there. I couldn't say how many trips I made up there in December, 1896; I was up there every few days, sometimes every day for several days, and sometimes two days between trips up.

Cross-examination:

I am not interested in this case against the Chrismans. I located a claim on the same day that Chrisman did, but on the southeast quarter.

M. M. LAVELLE, sworn for defendants and intervenor, testified in substance as follows:

Mr. METSON: Gentlemen, will you make the same admissions with reference to Mr. Lavelle that you did with reference to Major McQuiddy?

Mr. COLDWELL: The admission is that Mr. Lavelle will give the same testimony as that given by H. T. Chrisman and A. Y. Chrisman in reference to the time and place of putting the stakes and posting the notices on the two Chrisman claims, as that given by the two Chrismans.

The WITNESS: I reside at present in the Coalinga district; I am familiar with the northeast quarter of section 20, being the section in dispute in these actions; I have known that section since 1889; I was living right upon section 20 in December, 1896, on the southeast quarter; I was frequently on the northeast quarter during the year 1896; I saw no work of any kind being carried on there by any person during the year 1896, everything was in place
152 just the same as it was when I first came in there in 1889. If there had been any excavating or road making or derricks built or other work carried on on the northeast quarter of this section 20 during the year 1896 I would have seen it. The first time I saw a derrick erected on this northeast quarter, it must be some time between February and March, 1897; it was after, of course, it was after the Chrisman locations that I saw them put up the derrick, the first derrick that was ever put up on the northeast quarter; it was in a gulch right opposite the Canfield wells, where the Canfield wells was bored; or other ways, to make it more—this is right opposite where the pumping jack is pumping away up in the gulch. There is where they put up the first derrick. I think it was Frank Barrett that they said put up the derrick.

Q. Now, state with reference to the northwest corner of this northeast quarter, if you can, to the court; give it as near as you can with reference to that point.

A. The northwest corner of the—the northeast corner you mean?

Q. I speak with reference to Oil City, the northwest corner of the northeast quarter.

A. That corner will join 19, will it not? Oh, I know, that is the northwest quarter, but——

Q. Northwest of the northeast—that would be the center line of the section?

A. Oh yes, the center line of the section; yes, I was on there the first of January.

Q. Well, now, I want to locate that point with reference to this first derrick for the court's satisfaction.

153 A. Well, then, it would be probably north of east from the center. It would be kind of—yes, it would be north, north of east I think. Let me see—yes—I think the derrick would be east of north, for the derrick was built in the gulch.

The COURT: Was the derrick built on the east side of the northeast quarter or on the west side of the northeast quarter?

A. It was built on the east side of the northeast quarter—let me see, that would be the line that runs between the northwest and the northeast, if I remember. I am not acquainted with those——

Mr. METSON: Mr. Lavelle, look here at the blackboard. Assume that this is the north line of that section.

A. Yes, sir.

Q. And assume that this would be the east line, this the west line of the section; this would bisect the section, this would be the center of the section. Now, assume these to be the Chrisman locations there.

A. Young Chrisman commenced——

Q. Oil City over in this section.

A. Yes, that is the northwest quarter.

Q. What I want to show to the court is about the point where the first derrick was erected by any person at all.

A. The first derrick that was erected was erected in the gulch, and I think that that would lay from the center stake here of the section where I saw Chrisman place a notice. I think it was east, yes, it would lay east of north, where they put up the derrick in that gulch, and I think that that would lay from the center stake here of the section where I saw Chrisman place a notice, it

154 would lay east of north, where they put up the derrick in that gulch, probably nearly half a mile from the center stake.

I have been doing considerable work over in that country from time to time since 1889; I generally went up to Mr. Canfield's for my water for household and living purposes; went up there about twice a week; I was upon the northeast quarter several times in December, 1896, but I would not go near the northeast quarter coming around to get water at Canfield's, but I could see it opposite Mr. Canfield's place of business; I could see where this derrick, if there was a derrick there, where the derrick was built; I could see that frequently from where I got the water.

(No cross-examination.)

(Declaration of intention of Alphiloque Barieau to become a citizen of the United States, dated July 12th, 1877, filed and recorded in Book "A," Naturalization of Foreigners, records of Fresno county, California, page 82, is offered and received in evidence.)

The following affidavits of H. T. Chrisman and A. Y. Chrisman, and the certificate of Geo. W. Stewart, register of the U. S. land office at Visalia, California, are offered and received in evidence, to-wit:

"STATE OF CALIFORNIA, } ss:
County of Kings, }

H. T. Chrisman, being first duly sworn, deposes and says:

That he is a citizen of the United States and the owner of the following described mining claim, to-wit: the south half of the southeast quarter of the northeast quarter of section twenty
155 (20). township nineteen (19) south, range fifteen (15) of M. D. B. & M., the same being a placer mining claim known as the Paradise placer mining claim, and being situated in the county of Fresno, State of California.

That he performed and had performed the following labor and work upon the above described mining claim as follows:

Between the first day of January, 1897, and the first day of January, 1899, the building of road which was necessary to gain access to the said mining claim, which road was built through sections twenty-nine, twenty and twenty-one, township nineteen south, range fifteen east, M. D. B. & M., and upon the above mining claim, the value of said work and labor being one hundred dollars ($100.00) and over; and also the running of a tunnel for the development of water to be used upon the above described mining claim for mining purposes, and which work and labor is of the value of one hundred dollars ($100.00) and over.

H. T. CHRISMAN.

Subscribed and sworn to before me this 21st day of January, 1899.

W. R. McQUIDDY,
[NOTARIAL SEAL.] *Notary Public in and for the County of Kings, State of California.*

Endorsed: Filed for record at the request of T. J. McQuiddy Jan. 23, A. D. 1899, at 12 min. past 3 o'clock p. m., and recorded
156 in vol "L" of Miscellaneous, page 45, Fresno county records. J. M. Kerr, recorder, by J. E. Hughes, deputy recorder.

Marked Defendant's Exhibit No. 7. Filed May 5, 1899. G. W. Cartwright, clerk, by J. S. Pugh, deputy."

"STATE OF CALIFORNIA, } ss:
County of Kings, }

A. Y. Chrisman, being first duly sworn, deposes and says:

I am and all the times hereinafter mentioned have been a citizen of the United States and resident of the county of Fresno, State of California, and the owner of that certain mining claim or location known as the Bee Hive placer mining claim, situated in the county of Fresno, State of California, and more particularly described as follows, to-wit: Commencing at the center of section 20, in township

19 south, range 15 east, Mt. D. B. & M.; running thence east eighty rods to a stake in a mound of rock; thence north forty rods to a stake in a mound of rock; thence west eighty rods to a stake in a mound of rock; thence south forty rods to the place of beginning; being the south half of the southwest quarter of the northeast quarter of section 20 aforesaid, according to legal subdivision of the same; that the said mining location was made on the 1st day of January, 1897.

That between the 31st day of December, 1897, and the first day of January, 1899, I, the owner of said mining claim, performed or caused to be performed upon said mining claim, the following described work:

Nine days of labor upon a road located upon said claim
157 and adjoining lands for the purpose of access and transportation to and from said claim; forty-two days' work in driving a tunnel upon land adjacent to said mining claim for the purpose of developing a supply of water for use in operating steam machinery upon said Bee Hive mining claim. That the value of said work was $100.00 and more.

That I made upon the Bee Hive mining claim the following improvements, to-wit: I built thereon a miner's cabin or house, and that the cost of value of said house was, for lumber and other materials $45.37, and for labor in putting up the same $12.50 That the total value of the work done upon said mining claim and for the purpose of improving and working the same, and of the improvements made there during the year 1898 is more than one hundred and fifty-seven and 81–100 dollars.

A. Y. CHRISMAN.

Subscribed and sworn to before me this twenty-fifth day of January, 1899.

W. R. McQUIDDY,
Notary Public in and for the County
[NOTARIAL SEAL.] *of Kings, State of California.*

Endorsed: 719. Filed for record at the request of W. R. McQuiddy, Jan'y 26, A. D. 1899, at 10 min. past 4 o'clock p. m. and recorded in vol. "L" of Miscellaneous, page 49 *et seq.*, Fresno county records. J. M. Kerr, recorder, by J. B Daly, deputy recorder."

Marked Defendant's Exhibit No. 8. Filed May 5, 1899.
158 G. W. Cartwright, clerk, by J. S. Pugh, deputy.

"UNITED STATES LAND OFFICE,
VISALIA, CALIF., *May* 3, 1899.

I hereby certify that the records of my office show that George L. Dinely made homestead entry No. 9501 of the N. E. ¼ of sec. 20, T. 19 S., R. 15 E., M. D. M., Oct. 23, 1896; that said entry was cancelled by relinquishment Dec. 17, 1896; that State selection No.

4208, embracing said N. E. ¼ of sec. 20, T. 19 S., R. 15 E., M. D. M., was presented Dec. 17, 1896, sent to the General Land Office for approval Dec. 18, 1896, and relinquished as to said N. E. ¼ sec. 20, T. 19 S., R. 15 E. M. D. M., Feb. 21, 1896.

No part of said N. E. ¼ of said section 20 has been patented.

The State of California had previously presented selection No. 3684 for all of sec. 20, T. 19 S., R. 15 E., M. D. M.; said selection was cancelled by Commissioner's letter "K" of Sept. 30, 1895.

GEO. W. STEWART, *Register.*

Endorsed: Defendant's Exhibit No. 9. Filed May 5th, 1899. G. W. Cartwright, clerk, by J. S. Pugh, deputy."

E. O. MILLER, recalled for defendants and intervenor, testified in substance as follows:

Mr. METSON:

Q. Have you a deed from James E. Campbell of any portion of the northeast quarter of section 20?

A. No, sir; not in my possession.

159 Q. Certain?

A. No sir.

Q. Do you know where there is any deed?

A. I do not.

Q. Did you ever see one?

A. I did not.

Mr. METSON: We move that the testimony of the gentleman be stricken out, if the court please, with reference to any deed having been made of the placer mining claim purported to have been located on the 14th of June, 1895, James E. Campbell being one of the locators. I understand this witness testified there was such a deed.

Mr. COLDWELL: Certainly there was a stipulation of such a deed right in open court by Mr. McQuiddy. There was an express stipulation that Mr. Miller was the successor and holder of all the rights and title and interest in and to this property under and by virtue of the Barrett location in 1895.

The COURT: I think that was a stipulation made here.

Mr. METSON: Well, may it please the court, we don't understand that is the fact. If it was the fact it was made under a misapprehension, and we would ask that the record be corrected in that respect.

Mr. CORY: Most certainly we object to that. We had a witness here from Palo Alto and he has gone—we don't know where he is——

Mr. METSON: If you will state what that witness would have sworn to we may agree the witness so testified.

The COURT: I don't feel inclined to set aside a stipula-
160 tion when the parties come into court and make a stipulation.

Mr. METSON: We understand now there never was any such deed.

The COURT: I think you ought to have known whether there was or not before you made the stipulation, you had the same opportunity to find out then.

Mr. SHORT: It was a voluntary admission; we didn't ask it.

The COURT: Well, there is nothing before the court; I will deny the motion to strike out.

Mr. METSON:

Q. Have you any deed from any of the other locators, Mr. Miller, in your possession?

A. I have none of those deeds.

Mr. HARRIS: We object that this evidence under the stipulation that has been entered into here is incompetent, irrelevant and immaterial. We suppose it is for the same object as the other question.

Mr. HINDS: We would like to see that stipulation. Does the court remember a stipulation of that character?

The COURT: Yes.

Mr. HARRIS: Of course; Mr. McQuiddy stated it twice.

Mr. METSON: What is the court's ruling?

The COURT: There isn't anything before the court.

Mr. HARRIS: I objected and the court sustained the objection.

Mr. METSON: We take an exception, and take an exception to the other ruling.

Assignment of Errors Nos. 17 *and* 18.

161 Mr. METSON: We ask now to be relieved from any stipulation of that character; if any such stipulation was made it was made under a misapprehension of the facts. We would be willing to submit to any ruling or burden the court may place us under with reference to putting the testimony in such shape as would correspond with the facts, and if counsel on the other side have been surprised we agree that they might have a continuance to supply that defect, if they had a witness here to prove anything of that kind. I don't see how they could prove it except in writing. We might agree upon that witness's testimony.

Mr. SHORT: Well, we certainly object to anything of that kind. The stipulation didn't come from us. It was voluntary on the part of the defense in this case, to which we acceded.

Mr. COLDWELL: In direct line with the allegations of their amended answer.

Mr. METSON: Well, we ask leave to withdraw that part of the defense.

The COURT: Well, I think I will deny your application and you can take an exception.

Mr. METSON: We take an exception.

Assignment of Error No. 19.

Mr. METSON: If the court please, our position is that there is an error about any such stipulation having been entered into, and, of course, we want to be placed in the record fairly and squarely that there was no such stipulation and then we will have the court's ruling upon this matter.

The COURT: I don't know whether there is a stipulation
162 or not. My understanding is there was such a stipulation. I might have got the stipulation confounded with the opening statement. That might have been the case; I don't know, but my recollection is there is such a stipulation.

Mr. MCQUIDDY: I don't remember making any statement to that effect.

The COURT: I think I will say to you I will trust to my recollection. I hardly think I am mistaken about it, and will hold there was a stipulation of that kind.

Mr. BADGER: If the court please, the intervenor now asks permission of the court to amend his complaint, for the purpose of conforming to the facts as proven, in the following particulars: On line 25, page 5, wherein we allege that on the 30th day of December, 1896, the plaintiff E. O. Miller, made and executed to the United States what purported to be an abandonment of all rights, &c., we desire to amend by making that allegation read "the 29th;" that is the proof.

Mr. SHORT: Subject to all the objections as to the original intervention the date there may be changed.

Mr. BADGER: We also, if the court please, ask permission to amend the complaint in intervention by striking out therefrom the following words on page 5, line 12, and following: "That thereafter, to-wit, on the 24th day of December, 1896, by mesne conveyances, the plaintiff, E. O. Miller, succeeded to the right, title and interest of the locators in and to the said King Petroleum placer mining claim."

Mr. CORY: We most certainly object to that. It is simply
163 a change of front. We have tried this case and the plaintiff and defendant have rested upon the evidence on that matter.

The COURT: Well, I will deny your motion as to that amendment.

Mr. BADGER: We except.

Assignment of Error No. 20.

Mr. MCQUIDDY: If the court please, we would like to make a slight amendment to our answer, on page 5 line 17, so that line 17,

will add these words in line 17: "discovered by said A. Y. Chrisman," and after the end of line 18 add: "said land being at that time, at the time of said location, vacant, public mineral land."

The COURT: You may amend your answer to that extent.

J. W. FEWEL (intervenor), sworn in his own behalf, testified in substance as follows:

I am the intervenor in this case; I was born in Sonoma county, California; am 38 years old and a citizen of the United States. (Paper handed to witness, being certified copy of location notice.) I am the J. W. Fewel named in this notice.

The following notice of location is offered and admitted in evidence, marked Defendant's Exhibit No. 10, to-wit:

"*Notice of Location of Placer Claim.*

Notice is hereby given that the undersigned, a native born citizen of the United States, having complied with the requirements of chapter six of title thirty-two of the Revised Statutes of the
164 United States and the requirements of the legislature of the State of California entitled "An act prescribing the manner of locating claims upon the public domain of the United States, recording notices of location thereon, amending defective locations, and providing for a deposit of district records with county recorders, and prescribing the effect to be given to recordation of notices of location and affidavits of proof. Approved March 27, 1897, has located twenty acres of placer mining ground as hereinafter described under and by virtue of the laws of the United States and of the State of California governing the location, entry and sale of mineral lands on the public domain of the United States.

That the name of this claim is Boomer placer claim.

That the name of the locator is J. W. Fewel.

That the said claim was discovered and located on the 22nd day of Dec., 1898; that the said claim is the S. ½ of the N. W. ¼ of the N. E. ¼ of section 20, T. 19, S., R. 15 E., M. D. B. & M., situated in the county of Fresno, said State of California, and is particularly described as follows, to-wit: Commencing at a stake situated at the S. E. corner of said claim, and being the initial point of this survey, thence west 20 chains to a stake, thence north 10 chains to a stake, thence east 20 chains to a stake, thence south 10 chains to place of beginning, which is further described and distinctly marked on the ground so that its boundaries can be readily traced and said claim identified.

165 This claim is located for the purpose of developing petroleum and other mineral oils.

Dated and posted on the ground this 22 day of Dec., 1898, by

J. W. FEWEL.

Endorsed: Filed for record at the request of Alex Noble, Jan'y 21, A. D. 1899, at 50 min. past 1 o'clock, and recorded in vol. "M" of Mining Claims, page 400, Fresno county records. No. 588. J. M. Kerr, recorder, by J. B. Daly, deputy recorder.

Recorder's Certificate.

STATE OF CALIFORNIA, } ss:
County of Fresno, }

I, J. M. Kerr, recorder in and for said county, do hereby certify the annexed to be a full, true and correct transcript of the record of an instrument, as the same is recorded in my office in Book "M" of Mining Claims, page 400.

In testimony whereof, I have hereunto set my hand and affixed my official seal on this 4 day of May, A. D. 1899.

[SEAL.] J. M. KERR, *Recorder*,
By J. E. HUGHES,
Deputy Recorder."

Offer marked Defendant's Exhibit No. 10. Filed May 5th, 1899. G. W. Cartwright, clerk, by J. S. Pugh, deputy.

The WITNESS: That is a copy of the notice that I placed upon the ground. I made the location on the 22nd of December, 1898; in company with Mr. Chrisman I went to the southeast corner of the south half of the northwest quarter of the northeast quarter of section 20, T. 19 S., R. 15 E., and there erected a stake and
166 posted this notice, or a copy of this notice that is in evidence; in the first place, before going there, I went to the northeast corner of this particular land described and set a stake, then I went to this corner and set another stake and posted a notice and that is all I done on that day. The next day I went around with Mr. Chrisman to the west end of this particular piece of land and he pointed out to me there a stake that purported to be the southwest corner of this particular piece of land; we went from there on up toward the northwest corner of this particular piece of land, and there he pointed out another stake which purported to be the corner of that particular piece of land, and I prepared my notice so that they would—which the notices will show—so that they would show these stakes as my monuments of the claim. In other words I intended to designate these stakes as my monuments and adopt them as my monuments. I posted the notice just inside of the southeast corner of that claim; I prepared the notice and nailed it on a board and nailed the board on a stake and set it up on the territory, just on the inside, only a few feet. From the southeast corner we went to the northwest corner of that particular quarter section of land. I set a couple of stakes and adopted the other stakes; the stakes that

I set were redwood stakes about 20 inches long and probably two to two and a half square. The stakes at the west end that I adopted were pine stakes about an inch and a half square.

I retained a copy of the notice that I placed on the land and recorded it in the recorder's office at this place, had it done, I
167 think it was recorded on the 21st of January. They lost it in the recorder's office by some means or other, so they told me, notified me. I have never been able to get possession of it after it was placed on record.

I did some work on this property along about the 19th to the 20th of February, 1899, within a day or two there, I don't remember the date. I took a couple of men there and went to work to excavating and leveling up on the southeast corner of the property and preparing a place for a derrick, &c.; the purpose of this labor was to comply with the State law of 1897, for developing the mine. I went on the side hill there and cleaned off a place about 22 feet square, dug down on the upper side of the hill probably four or four and a half feet to bring it down to the level; cleaned it off onto the south side; done that for a foundation for a derrick, oil derrick; myself and my companions commenced work a little before 8 o'clock in the morning and worked until about 3 o'clock in the afternoon without any intermission for dinner. The reason why we didn't work all day was that we were ordered off the ground by representatives of the Home Oil Company. We were there at work and these parties came there and asked us what we were doing and we told them what we were doing. They told us we couldn't work there and we argued the question to some extent and they came armed, they had arms with them. The gentleman that done the talking had a six-shooter in his pocket which was very much displayed, and the other gentleman was sitting off on the side of the hill with a gun.
168 We talked the matter over to some extent. Finally he said: "I am going over the hill here and will be back here directly and I don't want to catch you gentlemen here." Of course I asked him who he represented and he told me who he represented, and on the whole we thought it was best, perhaps, to go, from what we learned heretofore and what we knew heretofore. I don't know that I could just state the language. "Of course," he says, "you will not be allowed to work here," and I asked him if he had authority to drive us off and he said he did, and in the meantime I asked him why some of the proprietors or some of the parties interested didn't come. He says "I can get them if you want to see them." I says "You might as well bring them here." He dawdled off over the hill and pretended to be looking for them, I don't know that he was, and he said when he came back they were not in evidence, were not to be found, and he gave us this imperative order, if he found us there, while he didn't say he would do any particular harm, the inference was very strong, if he found us there when he came back it wouldn't be good for us, &c. I have never gone back

on this particular 20 and attempted to do any other work; there are several reasons why. I thought I had gone——

Mr. HARRIS: We object on the ground that it is incompetent, irrelevant and immaterial. He can state what was done.

Mr. BADGER: If the court please, if we can show that these people, agents of the Home Oil Company and Mr. Miller, threatened this man if he came back on the northeast quarter they would
169 kill him, even if our labors didn't go to the extent required by law, it is an excuse for not doing it, and we think we would be permitted to show at this time the reason he didn't go back there and finish them.

The COURT: I suppose he has shown that sufficiently; I think you have shown sufficient reason for not doing more.

The WITNESS: I knew of the discovery of oil upon that ground prior to making the location; of course I didn't actually see it with my own eyes; the discovery of oil had been made. The party I had to locate the lines, assist in the location of the lines, knew of the oil.

Cross-examination:

I am a book-keeper and accountant. I have not been engaged in that business during the last year. I have been following different occupations during the last year. I have done—during the last twelve months I have not followed any definite occupation. I have performed various deeds toward making a livelihood; for instance, I taken the census of Visalia the other day, a few months ago. That took 10 or 12 or 15 days.

I had not been acquainted with that country before I went over there, that was the first trip over there. It was not Johnnie Kerr that run me off, he wasn't down there at that time; it was later that he undertook to run me off, or did when I went back there. The description of my claim, this "Boomer" claim, is the south half of the northwest quarter of the northeast quarter of section 20, township 19 south, range 15 east, M. D. B. & M. It was between 9 and
11 o'clock in the night I located that. Young Mr. Chrisman
170 was with me and Mr. Scott, a surveyor of Visalia, was with me that evening. I know what portion of that northeast quarter I located, so far as I could without absolutely surveying it. I knew from lines that I had run in the vicinity, from lines that I had followed out on that section the day before. I run the—not on that quarter section. I run lines from the southeast corner of section 20 across the south line of 21 and on to 22, and surveyed around on 22. I had a surveyor with me. From the southeast corner of that section the line is well marked and designated, running north along the east line of that section by redwood stakes set there standing up two and a half feet high probably, and the southeast corner of the southeast quarter is very well marked. I had seen the location from the fact that I had come along across the line of the cen-

ter of 21 running east and west showing me this corner, and following that line up that comes from the southeast corner of the section I located the southeast corner of the northeast quarter.

Q. How did you locate the southeast corner of the northeast quarter of the section?

A. Knowing the south——

Q. Didn't you say because you knew where the southeast corner of the section was that you located the southeast corner of the northeast quarter?

A. Yes, sir; and not by doing that altogether, but by following up the lines. The lines are a half a mile apart, but the line runs through the center of section 21, which I had located and which I followed out until it brought the two lines to a right angle. All
171 I knew about the description was what Mr. Chrisman told me. I put my location notice up there between 9 and 11 o'clock at night. The first portion of my location that I went to first was the northeast corner; Mr. Chrisman told me where it was. We went to the northeast corner of that particular piece of land first; I had it located by Mr. Chrisman, he told me where it was; I then went to the southeast corner from the northeast corner. I knew where it was because it was located by Mr. Chrisman. I went to the southwest corner and the northwest corner of my claim the next day, probably about 9 o'clock. The long way of my claim extends east and west, from the east line to the west line it is 20 chains and up the other way it is 10 chains. The young Mr. Chrisman was with me the next day when I went there, he showed me where the southwest corner and the northwest corner of my claim was. I adopted two stakes and set two stakes, one at each corner. The stakes I adopted were on the west end. I hoped to adopt a well there that I discovered. I found on the ground on that 20 acres that I located, at the time I located, derricks and machinery, &c. There was a tank-house, too, I believe; quite a building and a couple of large tanks in it.

Q. Now I will ask you this question, Mr. Fewel: If at the time you made this location you didn't know that the Home Oil Company was in the actual possession and occupation of that territory, and that they had a well on there, and that you saw these numerous buildings and improvements which you have described?

A. I didn't understand that they were in the actual posses-
172 sion. I understand they were in the occupancy; I knew that they had made this well. At the time that I made this location this well that I saw there was the only discovery of oil that I had made, that was my discovery of the oil on the 20 acres.

E. O. MILLER, recalled for intervenor, testified in substance as follows:

Mr. BADGER:

Q. Mr. Miller, did you ever receive a deed from Mr. James E. Campbell as the locator of any of this land in controversy?

Mr. COLDWELL: Objected to as irrelevant and immaterial and in the direct teeth of the stipulation made and entered in the trial of this case, and also seeking to draw out testimony to contradict the allegations of the intervenor's complaint.

(Objection sustained and exception.)

Assignment of Error No. 21.

Mr. BADGER:

Q. Mr. Miller, did you make any other locations over there at that time, with the same locators, in 1896, except the northeast quarter of section 20?

(Objected to on the ground that it is incompetent, irrelevant and immaterial, relates to property other than that in controversy, and does not tend to support the intervenor's complaint.)

Objection sustained and exception.

Assignment of Error No. 22.

Intervenor rests.

EDWARD L. DOHENY, sworn for plaintiff in rebuttal, testified in substance as follows:

173 I am a producer of oil. I have been in the employ of the Southern California Railway Company as oil expert for a period of about three years. I have been interested in the drilling and had charge of the drilling of between 75 and 100 wells. I have made a study of the production of oil, the character of soils and all the matters pertaining to a knowledge of whether land will produce oil or not. I have been engaged in that business since August, 1892. I have inspected the northeast quarter of section 20 in question; I think it was last month I was over and upon that land for the purpose of examining it in regard to its oil producing qualities. I examined in that vicinity certain wells that are producing oil. I went over the territory pretty thoroughly with Mr. Canfield. I went to a point that was pointed out to me there as the southeast corner, I don't know whether it was or not. There was an excavation, a small arroyo shaft about 15 feet deep with some water in it. Just below that, probably 40 or 50 feet, was another excavation in the nature of a cut with some water oozing from it also; the surface there is loose debris, an accumulation of the washings of the hillside. Immediately beneath that loose soil there is an exposure of shale, sandy shale thinly stratified, that has been disturbed from its

original horizontal position, has a dip of about 40 degrees I should judge. The exposure in the shaft shows a dip towards the northeasterly direction in the shaft. I rode to that point on horseback with Mr. Canfield and another gentleman and got off the horse, had my attention called to the shaft by Mr. Canfield, examined
174 the rock in the shaft and about it with the view of determining whether or not I could see any indications of oil in that vicinity. The indications of oil are the exuding of gas from the ground or the accumulation of residuum left after the volatile portions have left the oil. Those are the indications. The only other indications besides those are the oil itself oozing from the ground—oil makes its appearance in the form of gas or the limpid oil itself, or if both or either of those does not appear, there may be some residuum there pointing to the fact of oil having exuded at some former time, and without the volatile portion, leaving a gum or whatever it may be usually prevailing in those countries. When there is any petroleum on the surface of the water the action of the water is to decompose it and produce analine colors, or rainbow colors on the surface of the water. It always does that. That is an invariable test of petroleum. I examined the soil sufficiently to satisfy myself that there was not any oil in the soil.

Mr. METSON: We object to that as not rebuttal and the time is too far distant from the time of location for the purpose of enabling anyone to determine.

Mr. SHORT:

Q. Now state what, if any, indications you found there of oil at that time or having been there?

Mr. METSON: The objection to that is, that the date is too far distant from the time sworn to by the witnesses, not rebuttal and incompetent, and the proper foundation has not been laid.

(Objection overruled and exception.)

Assignment of Error No. 23.

175 A. I found no indications there whatever of oil.

Q. If there had been oil there flowing from the rock or ground at any previous time could you have discovered indications of it?

(Objected to on the same grounds as last above stated, and upon the further ground that the witness cannot give his opinion as to what might have been there two years before; it is not a subject of expert testimony. Objection overruled and exception.)

Assignment of Error No. 24.

C. A. CANFIELD, recalled for plaintiffs in rebuttal, testified in substance as follows:

I am acquainted with the last witness, Mr. Doheny: was with

him over on the northeast quarter at the time he stated and pointed out to him a tunnel or channel, it was on the southeast corner, one of the excavations was about 20 feet from the southeast corner, maybe a little farther. I examined the cut spoken of by Mr. Chrisman and others here. I examined that tunnel particularly the first of this week; I have been on that corner very many times; I was there two years ago, have examined it at different times in the last two years; I have been over that ground as often as once a month probably at that corner for three years and over; I have never seen any indications of oil there, am positive there was not. I was looking to see whether there was any oil or indications of oil at any of these times.

Cross-examination:

I saw no indications of oil, that is all I know about it.

176 I. F. POSTON, sworn for plaintiffs in rebuttal, testified in substance as follows:

I have been interested in this Coalinga oil district since 1895; I am at present a stockholder in the Home Oil Company; I know where the northeast quarter of section 20, T. 19 S., R. 15 E. is; was over in that vicinity in December, 1896, on the east line and west line, also in November, 1896; I have been at the southeast corner of the northeast quarter of that section at various times in the last four years, but more particularly during the last summer, from July probably or August till September we were there and developed water on that corner; my purpose there was to see if there was any indications of oil or any indications of water that we could develop; I know where there is a kind of tunnel some 15 feet from the southeast corner of the northeast quarter; the Home Oil Company made it and I was manager, oversaw the work, it is some 3 or 4 rods from the southeast corner; it was constructed in August or September, 1898; there was no work of any kind done there at the time we did our work; at that time I saw no oil or indications of oil in the vicinity of the southeast corner of the northeast quarter of that section. There was none at all, absolutely none.

(No cross-examination.)

(Defendants are granted leave to amend their amended answer herein, in the 4th paragraph, page 6, lines 9 and 10, to read as follows: "and that a seepage of petroleum or other mineral oil had been discovered by him upon said tract of land prior to the
177 making of said location, said land being then a portion of the public domain of the United States.")

W. F. CHANDLER, sworn for plaintiffs in rebuttal, testified in substance as follows:

I am one of the stockholders of the Home Oil Company, am acquainted with the northeast quarter of section 20; have been down in the vicinity of the southeast corner of that quarter; was down there doing the fore part of December, 1898, and was down there four or five weeks ago; the first time to simply look over the territory, the last time for the purpose of examining the ravine in reference to water; I saw what I call a well, I don't call it a tunnel, it was very close to the southeast corner of this quarter section of land, I can't state positively whether or not it was on this quarter section; I would say it was about four or five or six feet from that corner, very close to the stake that they said was the corner of the section; as I remember, it was an excavation about 4 feet square on top, 9 feet deep, went straight down. I measured the depth of that hole with a piece of timber that was there, and I examined the ground and the ravine both below the well and above it. I made as close an examination as I could. The water was about four feet from the top of the ground in the well, and I went below it to see if the water was seeping from the well. We only had to go a few feet, a rod or such a matter below the well, till we came to ground that was lower than the water was in the well, and I wanted to see if the
178 water was seeping out from this well. I examined the territory quite a distance below the well and then went up the canyon as far as there were any indications of any kind. I had a walking stick and every place I found any soft earth above the well I thrust it down as deep as I could, and I once got down and scraped the earth away with my hands in order to see the amount of water there was in one of them, and it was in order to see whether it was moving or not, and it was trickling slowly over a little rock that I had scraped the earth from. I walked clear to the head of the canyon as far as there were any indications of water at all, and examined it as carefully as I could. I wasn't looking for oil, I was looking for water. I didn't see any signs of any oil or of any ever having been there; I didn't see any symptoms of oil at all.

(No cross-examination.)

Plaintiffs rest.

(Copy of notice of location of petroleum mining claim, certified by recorder of Fresno county, dated June 14th, 1895, covering northeast quarter of section 20, T. 19 S., R. 15 E., in Fresno county California, to be known as the King Petroleum placer mining claim, located by Frank Barrett, K. W. Brown, Jas. L. McLean, James E. Campbell, J. J. Bright, Jas. A. McClurg Sr., Hart H. Barrett and A. Barieau; filed for record July 16, 1895, and recorded in vol. "I" of Mining Claims, page 453, Fresno county records, is offered and received in evidence and marked Defendants' Exhibit No. 6.)

179 The defendants and intervenor specify the following particulars wherein the evidence is insufficient to justify the decision of the court:

I.

The evidence is insufficient to justify the decision that the plaintiff, E. O. Miller, is the owner of the land described in the complaint, in this, to-wit:

(*a.*) The evidence is insufficient to show that on the 31st day of December, 1896, the said land was a part of the public domain of the United States, open to location and exploration under the mining laws of the U. S.

(*b.*) The evidence is insufficient to show that the plaintiff, E. O. Miller, or any of the other persons whose names appear with his upon the location notice dated Dec. 31, 1896, had ever at any time made a discovery of oil or any other mineral upon the said land.

(*c.*) The evidence is insufficient to show that the plaintiff, E. O. Miller, or any of the other persons whose names appear with his upon the location notice dated Dec. 31, 1896, ever marked their location upon the ground so that its boundaries could be readily traced.

(*d.*) The evidence is insufficient to show that the plaintiff, E. O. Miller, or any of the other persons whose names appear with his upon the location notice dated Dec. 31, 1896, were competent to make a mineral location upon the land in controversy.

180 (*e.*) The evidence is insufficient to show that the location attempted to be made by the plaintiff, E. O. Miller, and the other persons whose names appear with his upon the location notice dated December 31, 1896, was made in good faith and for the purpose of developing the mineral in or on the land in controversy.

(*f.*) The evidence is insufficient to show that the conveyance to plaintiff, E. O. Miller, by the other persons whose names appear with his upon the location notice dated December 31, 1896, and which said conveyance was dated July 31, 1897, was made for a good and valuable consideration, or was a transfer made in good faith by said persons.

II.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "II," that the plaintiff, E. O. Miller, is the owner of the land described in the complaint, in this, that the evidence is insufficient to show that on the 31st day of December, 1896, the said land was a part of the public domain of the United States, open to exploration and location under the mining laws of the United States.

III.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "II," that the plaintiff, E. O. Miller, is the owner of the land described in the complaint, in this, that the

evidence insufficient to show that the plaintiff, E. O. Miller, or any of the other persons whose names appear with his upon the
181 location notice dated December 31st, 1896, ever, at any time, made a discovery of oil or any other mineral upon the said land, or any part thereof.

IV.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "II," that the plaintiff, E. O. Miller, is the owner of the land described in the complaint, in this, that the evidence is insufficient to show that the plaintiff, E. O. Miller, or any of the other persons whose names appear with his upon the location notice dated December 31st, 1896, ever marked their location on the ground so that its boundaries could be readily traced, or that said location was marked upon the ground so that its boundaries could be readily traced by any other person on behalf or for the benefit of the persons named in said location notice, or in pursuance of said location.

V.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "II," that the plaintiff, E. O. Miller, is the owner of the land described in the complaint, in this, that the evidence is insufficient to show that the plaintiff, E. O. Miller, and the persons whose names appear with his upon the location notice dated December 31st, 1896, or either or any of them, were competent to make a mineral location upon the land described in the complaint.

VI.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "II," that the plaintiff, E. O.
182 Miller, is the owner of the land described in the complaint, in this, that the evidence is insufficient to show that the location attempted to be made on December 31st, 1896, was made in good faith.

VII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "II," that the plaintiff, E. O. Miller, is the owner of the land described in the complaint, in this, that the evidence is insufficient to show that the conveyance to plaintiff, E. O. Miller, by the other persons whose names appear with his upon the location notice dated December 31st, 1896, which said conveyance was dated July 31st, 1897, was made for a good and valuable consideration or was a conveyance made in good faith.

VIII.

The evidence is insufficient to justify the decision of the court as set forth in finding numbered "III," that the plaintiff, The Home

Oil Company, at the commencement of this action was, and ever since has been, and now is, in the actual possession of the same (lands described in the complaint) and every part thereof, in this:

(*a.*) That the evidence is insufficient to show that the said plaintiff was, at the commencement of the action, or at any time since, in the occupation of those portions of the lands described in the complaint located by the defendants on the 1st day of January, 1897.

(*b.*) That the evidence is insufficient to show that said
183 plaintiff had, at the commencement of this action, or at any time since, the right to the occupancy or possession of any of the lands described in the complaint.

IX.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "V," that the claims of said defendants are without any right, and that said defendants have no estate, right, title or interest whatever in said land or premises, or any part thereof, in this, to-wit:

(*a.*) That the evidence is insufficient to show that on the 1st day of January, 1897, the said land was not a part of the public domain of the United States, open to exploration and location under the mining laws of the United States;

(*b.*) That the evidence is insufficient to show that each of said defendants, respectively, did not, on or before the 1st day of January, 1897, make a discovery of petroleum or other mineral oil upon the respective locations made by them on said day;

(*c.*) The evidence is insufficient to show that each of the defendants, respectively, did not, on the 1st day of January, 1897, mark their respective locations on the ground so that the boundaries thereof could be readily traced;

(*d.*) The evidence is insufficient to show that each of the defendants was not competent to make his respective location, or that the same was not made in good faith.

X.

The evidence is insufficient to justify the decision of the
184 court set forth in finding numbered "VI," that the lands described in the complaint was, on the 31st day of December, 1896, a portion of the public domain of the United States, open to exploration and location for mining purposes under the laws of the United States.

XI.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "VIII," that the said parties therein mentioned did, on the 31st day of December, 1896, as an association of persons, make a mineral location upon the lands described in the complaint, by then and there posting upon the ground so claimed

by them a notice containing a description of the lands so claimed by them, and the names of them, the said locators, and, by then and there marking their said location on the ground so that the boundaries thereof could be readily traced, in this, to-wit:

(*a.*) That the evidence is insufficient to show that there was ever any agreement or contract of association or association of or among said parties for the purpose of making said or any mineral location;

(*b.*) That the evidence is insufficient to show that said parties, or any, or either of them, did, on said date, or at any other time, mark said attempted location on the ground so that the boundaries thereof could be readily traced, or that the same was done by any one in their behalf or for their benefit, or in pursuance of said attempted location.

XII.

185 The evidence is insufficient to justify the decision of the court set forth in finding numbered "IX," in this, to-wit:

(*a.*) That the evidence is insufficient to show that on the 31st day of July, 1897, the parties therein named, for a good and valuable consideration, conveyed unto the plaintiff, E. O. Miller, the lands described in said complaint.

(*b.*) The evidence is insufficient to show that the plaintiff, The Home Oil Company, did, on September 17th, 1897, or at any other time, go into the immediate, or any, possession of all of the property described in the complaint.

(*c.*) The evidence is insufficient to show that the said plaintiff, The Home Oil Company, was, on the 17th day of September, 1897, or at any time since has been, in the exclusive or any occupancy of the lands described in the complaint, or had the right to the occupancy or possession of any of the lands described in the complaint.

XIII.

The evidence is insufficient to justify the decision of the court as set forth in finding numbered "XI" in the particulars as hereinbefore set forth in specification "VIII," and specification "XI (*b*)," to which reference is hereby made.

XIV.

The evidence is insufficient to justify the decision of the court as set forth in finding numbered "XII," that on the 1st day of January, 1897, the land therein described was not open to exploration and location, or exploration or location for mining purposes under the laws of the United States.

186 XV.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XV," that the said defendant, A. Y

Chrisman, never, at any time, discovered a seepage of petroleum, or other mineral oil, upon said land, or any part thereof.

XVI.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XV," that the defendant, H. T. Chrisman, never discovered a seepage of petroleum, or other mineral oil, upon said land, or any part thereof.

XVII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XV," that the only discovery of petroleum, or any other fluid product upon said lands, or any part thereof, is the discovery made by the plaintiff, The Home Oil Company.

XVIII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XVII," that on the 1st day of January, 1897, no part of the land described therein was public mineral land, or open to exploration or location for mining purposes.

XIX.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XVII," that the land described therein was, on January 1st, 1897, in the possession of the parties
187 therein named, under and by virtue of the location therein mentioned, or at all.

XX.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XVIII," in this, to-wit:

(*a.*) The evidence is insufficient to show that the said defendants did not make their respective locations in good faith;

(*b.*) The evidence is insufficient to show that each of said defendants did not enter into the possession of his respective location, and the whole thereof, for the purpose of working and mining thereon, on the 1st day of January, 1897, or upon any other date.

(*c.*) The evidence is insufficient to show that each of said defendants has not, since the 1st day of January, 1897, done and performed upon his respective location, such work and labor, and made such improvements thereon as is required by the laws of the United States or of the State of California.

(*d.*) The evidence is insufficient to show that each of said defendants has not been, since the 1st day of January, 1897, or is not now in, and entitled to, the exclusive possession of the respective tracts of lands located by them on said 1st day of January, 1897.

XXI.

That the evidence is insufficient to justify the decision of the court set forth in finding "XIX," in this, to-wit:

188 (*a.*) That the evidence is insufficient to show that the claims of said plaintiffs, and each of them, is not without right;

(*b.*) That the evidence is insufficient to show that the claims of said plaintiffs, and each of them, is good and valid;

(*c.*) That the evidence is insufficient to show that the said plaintiffs have, and each of them has, an estate, right, title, claim and interest in and to the lands in controversy.

XXII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XIX," that "said plaintiffs have, and "each of them has, an estate, right, title, claim and interest in and "to said tract of land (the lands in controversy) and to the whole "thereof," in the particulars set forth in specifications hereof numbered "I," "II," "III," "IV," "V," "VI," and "VII," to which reference is hereby made.

XXIII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XX," that the location made on June 14th, 1895, by the persons named in said finding upon the land therein described was a "pretended" location of said lands.

XXIV.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XX," that on or about the 24th day of December, 1896, the said persons named in said finding ex-

189 ecuted and delivered to the Producers' and Consumers' Oil Company, a corporation, a deed, conveying to said company all the interest, claim and title in and to said tract of land which the said persons, or any of them, had or claimed to have.

XXV.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XX," that on or about the 24th day of December, 1896, the Producers' and Consumers' Oil Company made, executed and delivered to E. O. Miller, one of the plaintiffs herein, a quitclaim deed conveying and quitclaiming unto said E. O. Miller, all the right, title, claim and interest of said Producers' and Consumers' Oil Company to the lands described in said finding, in this, that the evidence is insufficient to show that said pretended conveyance by said company was ever ratified by the stockholders thereof representing two-thirds, or any, of the capital stock of said corporation.

XXVI.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XX," that "on the 31st day of December, 1896, the said E. O. Miller, by his written declaration, abandoned and relinquished and released unto the United States of America all right in and to said tracts of land (lands described in complaint) acquired by him from said Producers' and Consumers' Oil Company and its grantors," in this, to-wit:

(*a.*) The evidence is insufficient to show that the plaintiff,
190 E. O. Miller, at the time of the pretended abandonment, was the owner of, or had any right, title, interest in or to, or possession of, the land described in the complaint;

(*b.*) The evidence is insufficient to show that the plaintiff, E. O. Miller, intended to relinquish or abandon any right in said land, or was moved by any intention to abandon, surrender, relinquish, disclaim, cede or give up any right or interest in said land;

(*c.*) That the evidence is insufficient to show that the plaintiff, E. O. Miller, in attempting to make said abandonment was not pressed by duty, necessity or utility to himself;

(*d.*) The evidence is insufficient to show that said plaintiff, E. O. Miller, at the time he attempted to make said abandonment desired no longer to hold or possess said land;

(*e.*) The evidence is insufficient to show that the said plaintiff, E. O. Miller, at the time he attempted to make said abandonment was without any desire that a particular person or persons should possess said land;

(*f.*) That the evidence is insufficient to show that when said plaintiff, E. O Miller, attempted to make said abandonment there was a concurrence of the act of leaving the said land vacant so that it might be appropriated by the next comer, and the intention of not returning thereto.

XXVII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXIII," in this, to wit:

191 (*a.*) That the evidence is insufficient to show that the plaintiff, E. O. Miller, did not enter into an agreement with the persons and for the purposes mentioned and set forth in paragraph "II" of the "third further and separate defense" contained in defendants' second amended answer;

(*b.*) That the evidence is insufficient to show that the transfer of the "King Petroleum placer mining claim" was for a good consideration and made in good faith as set forth in paragraph "III" of the "third further and separate defense" contained in defendants' second amended answer;

(*c.*) That the evidence is insufficient to show that the said E. O. Miller did not procure one George L. Dinely to make a homestead entry upon the land described in the complaint for the use and

benefit of said E. O. Miller, and thereafter procure a relinquishment thereof;

(*d.*) That the evidence is insufficient to show that said E. O. Miller did not procure the State of California to make indemnity selection of the lands described in the complaint, and thereafter procure one Ernest L. Smith to make application to purchase the same on the 17th day of December, 1896, for the use and benefit of said E. O. Miller, and on the 14th day of February, 1898, procure the relinquishment of said application to purchase, and thereafter procure the relinquishment of said State selection;

(*e.*) That the evidence is insufficient to show that the said plaintiff,
E. O. Miller, did not, for his own use and benefit, on the 31st
192 day of December, 1896, procure the persons whose names appear with his on the location notice dated on said day to make a location on said lands for his (Miller's) own use and benefit;

(*f.*) That the evidence is insufficient to show that there was any privity or agreement among the persons whose names appear on said location notice, or that said persons consented that their names be placed thereon;

(*g.*) The evidence is insufficient to show that the location referred to of December 31st, 1896, was made in good faith; was not an attempt at relocation by original locators; was not made for the purpose of avoiding the assessment work for the year 1896 on said location; was not made in pursuance, and in accordance with, an agreement and design to secure more lands under the mining laws of the United States than said laws permit an individual or an association of individuals to secure, and that said claim was not contiguous to other claims located on the 31st day of December, 1896, by the same parties.

XXVIII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXIV," that the intervenor, J. W. Fewel, is not now the owner and has never been the owner of the land described in said finding, and that the claim of said intervenor thereto is without any right or foundation whatever, in this, to-wit:

(*a.*) That the evidence is insufficient to show that on the
193 22nd day of December, 1898, said land was not a part of the public domain of the United States, open to exploration and location for mining purposes under the laws of the United States;

(*b.*) That the evidence is insufficient to show that said intervenor did not, on or before December 22nd, 1898, make a discovery of petroleum, or other mineral oil upon the location made by him on said date;

(c.) That the evidence is insufficient to show that said intervenor did not, on December 22nd, 1898, post a notice of mineral location upon said land, in writing, which said notice contained a description of the land claimed therein and thereby, both by metes and reference to the

legal subdivisions of said land, the name of the claim, the name of the locator, the date of the location, the purpose for which the claim was located, and the signature of the locator therein named, and did not thereafter, to-wit, on the 20th day of January, 1899, cause a copy of said notice to be recorded in the office of the county recorder of the county in which said land is situated;

(*d.*) That the evidence is insufficient to show that said intervenor did not properly mark the boundaries of said location on the ground so that the same could be readily traced;

(*e.*) That the evidence is insufficient to show that said intervenor did not, within 60 days after the date of his said location, do and perform work and labor thereon in developing the same to the amount of $10.00.

(*f.*) That the evidence is insufficient to show that said in-
194 tervenor was not competent to make said location or that the same was not made in good faith.

XXIX.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXVI," that the land described in said finding was not on December 22nd, 1898, open to exploration and location for mining purposes under the laws of the United States.

XXX.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXVIII," "that the intervenor, "J. W. Fewel, did not, on the 22nd day of December, 1898, or upon "any date, enter upon and locate under and by virtue, or in accord-"ance with the laws of the United States and with the laws of the "State of California regulating the sale and appropriation of the "mineral lands of the United States, any portion of said section 20," in this, to-wit: In the particulars set forth in specification numbered "XXVIII" hereof, to which reference is hereby made.

XXXI.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXVIII," that the intervenor did not, on December 22, 1898, nor upon any day, mark the boundaries of his said claim on the ground so that the same could be readily traced, and did not on said or any day mark said boundaries in any manner whatever, nor within the time limited by law.

195 XXXIII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXVIII," that said intervenor did not at any time perform labor upon his claim in an amount in excess of the sum of $10.00 or in any other amount.

XXXIV.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXIX," in this, to-wit: that the evidence is insufficient to show that said section 20 was not, on the 22nd day of December, 1898, surveyed land of the United States, and that the claim of said intervenor was not located thereon in such manner that its exterior boundaries conformed to the legal subdivision of said section.

XXXV.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXX," in this, to-wit: in the particulars set forth in specification numbered "XXVIII" hereof, to which reference is hereby made.

XXXVI.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXXI," in this, to-wit:

(*a.*) That the evidence is insufficient to show that the claim of the plaintiffs to the land referred to in said finding is with right or founded in law or in equity;

(*b.*) That the evidence is insufficient to show that the
196 claim of said plaintiff to said land is good or valid.

XXXVII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXXII," in this, to-wit:

(*a.*) That the evidence is insufficient to show that the land mentioned in said finding was not, on the 14th day of June, 1895, a portion of the public domain of the United States and open to exploration and location for mining purposes under the laws of the United States;

(*b.*) That the evidence is insufficient to show that A. Barieau, mentioned in said finding, did not, on or before the 14th day of June, 1895, make a discovery of petroleum, or other mineral oil, upon the lands referred to in said finding;

(*c.*) That the evidence is insufficient to show that the persons mentioned in said finding did not mark said location upon the ground so that its boundaries could be readily traced;

(*d.*) That the evidence is insufficient to show that said persons mentioned in said finding were not competent to make a mineral location upon the land described in the complaint on said 14th day of June, 1895;

(*e.*) That the evidence is insufficient to show that the persons mentioned in said finding did not make said location in good faith.

XXXVIII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXXIII," that said plaintiff,
197 E. O. Miller, did not, on the 31st day of December, 1896, execute the pretended abandonment mentioned in said finding for the purpose of avoiding the necessity of doing the assessment work as required by the laws of the United States for the year 1896.

XXXIX.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXXV," in this, to-wit:

(*a.*) That the evidence is insufficient to show that said persons mentioned in said finding made the location mentioned therein in good faith;

(*b.*) That the evidence is insufficient to show that said persons mentioned in said finding, other than plaintiff, E. O. Miller, made the location mentioned therein for their own use and benefit;

(*c.*) That the evidence is insufficient to show that the persons mentioned in said finding, other than said E. O. Miller, did not make said location at the instigation and request of said E. O. Miller, and for his sole use and benefit;

(*d.*) That the evidence is insufficient to show that the said location was not made for the purpose of enabling the said E. O. Miller to hold and acquire a greater area of the mineral lands of the United States than the laws of the United States permits an individual to hold or acquire.

XL.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXXVI," in this, to-wit:

(*a.*) The evidence is insufficient to show that the persons
198 named in said finding did not make the location therein referred to in pursuance of and in accordance with a conspiracy, collusion and concerted design to secure and appropriate the lands therein referred to by avoiding the requirements of the laws of the United States;

(*b.*) The evidence is insufficient to show that the location mentioned in said finding was not a relocation by original locators;

(*c.*) The evidence is insufficient to show that the location in said finding referred to was made at a time when the land included therein was open to exploration and location and was not premature and invalid and of no force or effect;

(*d.*) The evidence is insufficient to show that the location mentioned in said finding was marked upon the ground so that the boundaries thereof could be readily traced.

XLI.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXXVII," in this, to-wit:

(*a.*) That the evidence is insufficient to show that the persons whose names appear upon the location notice dated December 31st, 1896, did not, upon said day, contrary to the laws of the United States, make other locations which were contiguous to the lands mentioned in the complaint;

(*b.*) The evidence is insufficient to show that said persons did not attempt to locate and hold a greater area of the mineral lands of the United States than is or was permitted to be located or held
199 by an individual or an association of individuals.

XLII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXXVIII," in this, to-wit:

(*a.*) The evidence is insufficient to show that the said E. O. Miller did not procure said George L. Dinely to make a homestead entry upon the lands mentioned in said finding for the benefit of said E. O. Miller;

(*b.*) The evidence is insufficient to show that the said E. O. Miller did not procure said Ernest L. Smith to make an application to the State of California to purchase said lands as indemnity or lieu lands for the use and benefit of said E. O. Miller, and subsequently to secure the abandonment thereof by said State.

XLIII.

The evidence is insufficient to justify the decision of the court set forth in finding numbered "XXXIX," in this, to-wit: the evidence is insufficient to show that the acts of the said plaintiff, E. O. Miller, to-wit, the attempted abandonment made on December 29th, 1896; the re-location attempted December 31st, 1896, for the purpose of avoiding the performance of assessment work for the year 1896; the locating of claims contiguous to the land described in the complaint on December 31st, 1896; the attempt to locate and hold more than 160 acres of the public domain of the United States under the mining laws thereof by one person or association
200 of persons; the procuring one George L. Dinely to make homestead entry on said land for the use and benefit of said E. O. Miller; the procuring of the State of California to select the lands described in the complaint as indemnity lands; the procuring one Ernest L. Smith to make application to purchase said lands from the State of California for the use and benefit of said E. O. Miller; the procuring the relinquishment by the State of its said selection, and procuring a transfer to himself by the State of the persons whose names appear with his upon the location of December 31st, 1896, were not and did not constitute fraud against the United States and against the intervenor.

The defendants and the intervenor here specify the following errors in law occurring at the trial and excepted to by said defendants and intervenor, upon which they will rely in support of their motion for a new trial.

I.

The court erred in overruling the objection to the manner in which the witness E. O. Miller gave his testimony.

II.

The court erred in overruling the objection to the introduction of the lease from E. O. Miller to Frank Barrett, assigned to the Home Oil Company (Pl'ff's Ex. 2).

201 III.

The court erred in denying the motion to strike out from the evidence Plaintiff's Exhibit 1, on the grounds stated in the motion.

IV.

The court erred in overruling the objection to the testimony of the witness W. F. Hall, made upon the grounds stated in the objection.

V.

The court erred in sustaining plaintiff's objection to the following question propounded to the witness W. F. Hall: "Q. Well now I "will ask you when you were over there on the 31st of December, "1896, did you not put up some other notices besides on the northeast "quarter?"

VI.

The court erred in sustaining plaintiff's objection to the following question propounded to the witness W. F. Hall: "Q. What did you do there?"

VII.

The court erred in sustaining plaintiff's objection to the following question propounded to the witness W. F. Hall: "Q. Did you post "a notice in the middle of the section, at the corner common to all "four quarters?"

VIII.

The court erred in sustaining plaintiff's objection to the following question propounded to the witness W. F. Hall: "Q. What I want "to know, what was the intent and purpose between you and Mr. "Miller of making that abandonment?"

202 IX.

The court erred in denying the motion to strike out from the testimony of C. A. Canfield, the testimony in regard to the small stakes, which he saw upon the lines of the land before Mr. Miller made his so-called location.

X.

The court erred in overruling the objection to the introduction in evidence of the affidavit of I. F. Poston as to labor performed on the land in question during the year 1897.

XI.

The court erred in overruling the objection to the introduction in evidence of the affidavit of I. F. Poston as to work done upon the land in question during the year 1898.

XII.

The court erred in denying the motion to strike out the testimony of D. G. Overall and Harry Levison relative to their citizenship.

XIII.

The court erred in overruling the objection to the following question propounded to the witness Chas. H. Smith: "Q. Are you a "citizen of the United States?"

XIV.

The court erred in allowing the admission subject to the objection and exception contained in the foregoing two assignments of error, that L. E. Hall and R. B. Biddle were citizens of the United States.

203 XV.

The court erred in denying the motion for a non-suit.

XVI.

The court erred in sustaining plaintiff's objection to the following question propounded to the witness A. Barieau: "Q. What lands "did it cover?"

XVII.

The court erred in denying the motion to strike out from the evidence a certain stipulation or admission claimed to have been made by defendant's attorney, Mr. McQuiddy.

XVIII.

The court erred in sustaining plaintiff's objection to the question propounded to the witness E. O. Miller, recalled for the defendant, relative to a certain deed made by James E. Campbell of his interest in the land in question under the location of June 14th, 1895.

XIX.

The court erred in refusing leave for defendants to withdraw that part of their defense relative to the matters involved in the two foregoing assignments of error.

XX.

The court erred in denying and refusing intervenor permission to amend his complaint in intervention, by striking out from page 5 thereof, commencing on line 12, the following: "That thereafter,
"to-wit, on the 24th day of December, 1896, by mesne con-
204 "veyances, the plaintiff, E. O. Miller, succeeded to the right,
"title and interest of the locators in and to the said King
"Petroleum placer mining claim."

XXI.

The court erred in sustaining plaintiff's objection to the following question propounded to the witness E. O. Miller, called for intervenor:

Q. Mr. Miller, did you ever receive a deed from Mr. James E. Campbell as locator of any of this land in controversy?"

XXII.

The court erred in sustaining plainttff's objection to the following question propounded to the witness E. O. Miller by the intervenor:

Q. Mr. Miller, did you make any other locations over there at that time, with the same locators, in 1896, except the northeast quarter of section 20?"

XXIII.

The court erred in overruling the objection to the following question propounded to the witness Edward L. Doheny:

"Q. Now state what, if any, indications you found there of oil at that time or having been there."

XXIV.

The court erred in overruling the objection to the following question propounded to the witness Edward L. Doheny:

"Q. If there had been oil there flowing from the rock or ground at any previous time could you have discovered indications of it?"

205 The said defendants and the said intervenor here specify the following particulars wherein the decision of the court and the judgment thereof is against law.

1. The decision of the court whereby it was adjudged that the said plaintiff, E. O. Miller, is the owner of the whole of the land and premises described in the said complaint and is entitled to the possession thereof, and that the said defendants and the said intervenor are not the owners of the said land or of any part thereof, is against law in this, that this is an action to quiet title and one wherein the plaintiff must recover, if at all, on the strength of his own title and not upon the weakness of the defendants' title, or the weakness of any title asserted against his title; and it was clearly proven in evidence that the plaintiff's title to the said land was the weaker title of the two titles asserted in the said action; and said decision is against law for the further reason that the evidence clearly proves that the claim of the plaintiffs in this action to the said premises was based upon a so-called mineral location attempted to be made at a time when the land sought to be located was not a part of the public domain open to exploration and appropriation or location under the laws of the United States, and was therefore void, premature, of no effect and inoperative for any purpose whatever, while the title of the defendants and the intervenor was clearly proven to rest upon a location of the portions of the said land
206 claimed by them respectively made at a time when the land was open to exploration and location and was a part of the public domain, and each of the locations of the said defendants and the said intervenor was made in good faith and for the purpose of acquiring the land appropriated thereby for the purpose of developing the mineral therein, while the so-called location under which the said plaintiff, Miller, claims the said land was not made in good faith, but for speculative purposes, and by the use of "dummies," and not in accordance with the laws of the United States or of the State of California, and the said plaintiffs are not entitled therefore to judgment in the case, and judgment should have been for the defendants and the intervenor herein.

2. The decision of the court declaring and adjudging that neither of the said defendants nor the said intervenor has any right, estate, title, or interest or right of possession whatever in the said portions of the said land described in the said complaint claimed by them respectively, and said defendants and said intervenor are debarred from asserting any claim in or to the said premises or any part thereof adverse to the said plaintiffs or either of them, is against law in this, that it was clearly proven at the trial that the said defendants have an estate, right, title, interest and right of possession in and to the part of the said land claimed by them, and the said intervenor has an estate, right, title, interest and right of possession to that portion of the said land claimed by him, and that the said

defendants and the said intervenor are and were, at all the
207 times they alleged they were, the absolute owners of the respective portions of the said lands claimed by them respectively, as against the said plaintiffs, and both or either of them.

3. The decision of the court awarding costs to the said plaintiffs is against law for the reasons hereinbefore stated.

The said defendants and the said intervenor here specify the following errors upon which they will rely in support of their motion for new trial.

1. The court erred in its conclusion of law numbered "1," which is as follows:

"That the plaintiff, E. O. Miller, is the owner of all that piece and parcel of land situate in the county of Fresno, State of California, and particularly described in the complaint on file herein as against the defendants, A. Y. Chrisman and H. T. Chrisman, and as against the intervenor, J. W. Fewel, and as against all persons claiming or to claim said land or any part thereof. And that the said plaintiff, Home Oil Company, is the lessee of all of said piece and parcel of land under the title of the plaintiff, E. O. Miller, and is entitled to the actual possession of said land, and each and every part thereof, as against the said defendants, A. Y. Chrisman and H. T. Chrisman, or either of them, and as against the said intervenor, J. W. Fewel," to which the said defendants and the said intervenor duly excepted.

208 2. The court erred in its conclusion of law numbered "2," which is as follows:

"That the said plaintiffs are entitled to a decree declaring and adjudging that neither of said defendants, A. Y. Chrisman and H. T. Chrisman, nor the said intervenor, J. W. Fewel, has any estate, right, title or interest, or right of possession whatever, in and to said land and premises, or any part thereof, and forever enjoining and debarring the said defendants, A. Y. Chrisman and H. T. Chrisman, and said intervenor, J. W. Fewel, from asserting any claim in or to said premises, or any part thereof, adverse to the said plaintiffs, or either of them," to which the said defendants and the said intervenor duly excepted.

3. The court erred in its conclusion of law numbered "3," to which the said defendants and the said intervenor duly excepted.

4. The decision is based on findings of fact that do not embrace all or determine all of the material issues of fact raised by the pleadings.

5. The decision is based on findings of facts on matters not embraced within the issues of fact raised by the pleadings.

6. The decision is based on erroneous conclusions of law drawn from findings of facts unsupported and not justified by the evidence.

In order that the foregoing inaccuracies, insufficiencies and errors may remain of record, the defendants and the intervenor propose

this as their statement on motion for a new trial herein, and
209 respectfully ask that the same be settled, allowed and certified by the court.

Dated this 17th day of August, 1899.

W. R. McQUIDDY,
S. J. HINDS,
AUSTIN & JONES, AND
REDDY, CAMPBELL & METSON,
Attorneys for Defendants.
E. O. LARKINS,
U. T. CLOTFELTER, AND
W. S. BADGER, *Attorneys for Intervenor.*

It is hereby stipulated and agreed by and between the attorneys for all of the parties to this action, that the foregoing statement of the case on motion for a new trial, proposed on the part of the defendants and the intervenor, is correct, and the same may be settled, allowed and certified by the court, and may be used by any of said parties, as well on an appeal from an order granting or refusing a new trial, as on the motion for a new trial.

Dated this 22d day of November, 1899.

N. C. COLDWELL,
L. L. CORY,
F. H. SHORT,
M. K. HARRIS, *Attorneys for Plaintiffs.*
W. R. McQUIDDY,
S. J. HINDS,
AUSTIN & JONES, AND
REDDY, CAMPBELL & METSON,
Attorneys for Defendants.
E. O. LARKINS,
U. T. CLOTFELTER, AND
W. S. BADGER, *Attorneys for Intervenor.*

210 Personal service of the foregoing statement of the case on motion for a new trial, and receipt of a copy of the same on the part of the defendants and the intervenor, is hereby admitted this 17th day of August, 1899, reserving all objections and exceptions to same as to time and manner of service of same.

L. L. CORY,
Attorney for Plaintiffs.

I, J. R. Webb, judge of the superior court, do hereby certify that the foregoing statement of the case on motion for a new trial is settled, allowed, and the same is correct.

Witness my hand this 24th day of November, 1899.

J. R. WEBB,
Judge of the Superior Court.

Endorsed: Filed Nov. 24-1899. G. W. Cartwright, clerk. By J. E. Cartwright, dep'y clerk.

Notice of Motion for New Trial.

(Title of Court and Cause.)

To the said plaintiffs and N. C. Coldwell, L. L. Cory, Frank H. Short and M. K. Harris, and J. A. Hannah, attorneys for said plaintiffs:

You and each of you will please take notice that on Friday, the first day of December, 1899, at the court room of department No. 2 of the above court, at the court house in the city of Fresno, 211 county of Fresno, State of California, at the opening of court on that day, or as soon thereafter as counsel can be heard, the said defendants and the intervenor will move the court for an order granting them a new trial of this action.

Said motion will be made upon the statement of the case heretofore prepared, and certified by the court herein.

Said motion will be made and based upon all the grounds stated and set forth in the notices of intention to move for a new trial herein, heretofore served and filed herein by the said defendants and the said intervenor.

W. R. McQUIDDY,
S. J. HINDS,
AUSTIN & JONES, AND
REDDY, CAMPBELL & METSON,
Attorneys for Defendants.
E. O. LARKINS,
U. T. CLOTFELTER, AND
W. S. BADGER, *Attorneys for Intervenor.*

Dated November 25, 1899.

Endorsed: Filed Nov. 25, 1899. G. W. Cartwright, clerk, by J. E. Cartwright, dep'y clerk.

Minute Order.

(Title of Court and Cause.)

FRESNO, CALIFORNIA, *Dec. 1st*, 1899.

It is ordered that the hearing of the motion for a new trial herein be continued to Dec. 8th, 10 a. m.

212 *Minute Order.*

(Title of Court and Cause.)

FRESNO, CALIF., *Dec. 8th*, 1899.

It is ordered that the motion of defendants and intervenor herein for a new trial be, and the same is, hereby denied.

Notice of Appeal.

(Title of Court and Cause.)

You will please take notice that the defendants, A. Y. Chrisman and H. T. Chrisman, and the intervenor, J. W. Fewel, in the above-entitled action, hereby appeal to the supreme court of the State of California from the judgment therein entered in the said superior court on the 24th day of June, 1899, in favor of the plaintiffs in said action, and against the said defendants and the said intervenor, and from the whole thereof, and also from the order denying said defendants' and said intervenor's motion for a new trial, made and entered in the minutes of said superior court on the 8th day of December, 1899.

Dated this 16th day of December, 1899.

W. R. McQUIDDY,
S. J. HINDS,
AUSTIN & JONES, AND
REDDY, CAMPBELL & METSON,
Attorneys for said Defendants.
E. O. LARKINS,
U. T. CLOTFELTER, AND
W. S. BADGER,
Attorneys for said Intervenor.

213 To the said plaintiffs, and to N. C. Coldwell, M. K. Harris, Frank H. Short and L. L. Cory, attorneys for said plaintiffs.

Endorsed: Filed Dec. 19-1899. G. W. Cartwright, clerk by J. E. Cartwright, dep'y clerk.

(Title of Court and Cause.)

STATE OF CALIFORNIA, } ss:
County of Fresno, }

It is hereby stipulated and agreed by and between the attorneys for all of the parties hereto that the foregoing is a full, true and cor-

rect transcript of the judgment roll, minute orders allowing intervention, notice of intention to move for a new trial on the part of defendants, notice of intention to move for a new trial on the part of intervenor, statement on motion for a new trial, motion for a new trial, order denying motion for a new trial, and notice of appeal, in said action; and that for the sake of brevity the words "Title of court and cause" have been used in place and stead of the full title of court and the names of the parties to the action; and the words "Duly verified" in place and stead of the full verification of the pleadings. And we further certify that an undertaking in due form of law has been duly and regularly filed herein to perfect the appeal in this action.

Dated February — 1900.

214

N. C. COLDWELL,
L. L. CORY,
M. K. HARRIS,
FRANK H. SHORT,
Attorneys for Plaintiffs.
W. R. McQUIDDY,
AUSTIN & JONES, AND
REDDY, CAMPBELL & METSON,
Attorneys for Defendants.
E. O. LARKINS,
U. T. CLOTFELTER, AND
W. S. BADGER, *Attorneys for Intervenor.*

215 In the Supreme Court of the State of California.

E. O. MILLER and THE HOME OIL COMPANY, a Corporation, Plaintiff- and Respondents,
vs.
A. Y. CHRISMAN and H. T. CHRISMAN, Defendants and Appellants; J. W. Fewel, Intervenor and Appellant.
S. F. No. 2242.

I, Frank C. Jordan, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the transcript,—decision—rehearing denied—and dissenting opinion as shown by the records of my office.

Witness my hand and the seal of the court, this 3d day of December, A. D. 1903.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk.*
By OSCAR A. TOLLE, *Deputy.*

[Endorsed:] No. 2242.

216 *Copy.*

Filed Sept. 30, 1903. Frank C. Jordan, Clerk, by R. D. Duke, Deputy.

In Bank.

E. O. MILLER and THE HOME OIL COMPANY, a Corporation, Plaintiffs and Respondents,
vs.
A. Y. CHRISMAN and H. T. CHRISMAN, Defendants and Appellants; J. W. Fewel, Intervenor and Appellant.
} S. F. No. 2242.

This action is to quiet title to the northeast quarter of section 20, township 19 south, range 15 east, Mount Diablo base and meridian, in the county of Fresno, State of California. All parties claim by virtue of locations made under the mineral laws of the United States.

In the year 1895, it is admitted that the land in controversy was a part of the public domain of the United States and open to exploration and location under its mineral laws. Upon the 14th day of June 1895 one A. Bariceau, on behalf of himself and seven others, as associates, went upon the land and posted a location notice. Nothing further was done until the month of January following, when Bariceau went upon the land with a surveyor and marked the boundaries of the location upon the ground. Upon the 24th day of December, 1896, the interests of Bariceau's seven alleged associates passed to E. O. Miller, plaintiff herein, by mesne conveyance. Thereafter, on the 31st of December, 1896, Miller executed a purported abandonment and relinquishment of his right, title and interest to the land in controversy to the United States, and on the same day made a location on behalf of himself and seven associates.

Upon January 1, 1897, the defendants Chrisman made their locations; while upon the 22nd day of December, 1898, more than two months after the commencement of this action, and in the night time, the intervenor, with H. T. Chrisman, entered upon the land and made still another location covering a part of it. After
217 trial the court found in favor of plaintiffs' location against the locations of defendants and the intervenor, and judgment passed accordingly. Defendants and intervenor make common cause upon most of the matters presented upon appeal.

Their contentions are:

1. That the location by Bareau and others upon the 14th of June, 1895, was a valid location which devested the land of its status as part of the public domain, and appropriated it to private claim and dominion until the end of the year 1896.

2. That, therefore, Miller's attempted location upon December 31, 1896, was void because made at a time when there was a valid subsisting location upon the land; because it was not based on a discovery and was not perfected by a subsequent discovery until the rights of other parties attached; because the location was in fact made only by Miller, Hall and Hannah, the other five co-locators being mere dummies, and, finally, because the boundaries of the location were not marked upon the ground so that they could be readily traced.

3. That no assessment work whatsoever having been done upon the land in question during the year 1896, by or on behalf of Bareau and his co-locators, the Bareau location lapsed, and on the first day of January, 1897, the land again became open for exploration and location, and was so open at the time that defendants made their locations upon January 1, 1897; that their locations were and at all times have been valid subsisting locations.

It will thus be noted that none of the appellants claim under the Barieau location, nor contend that they have acquired any of the rights of those locators. It is agreed that if the Barieau location was in all other respects a valid location, it lapsed at the end of the year 1896 by failure to perform the statutory amount of labor. If, however, the Barieau location was not a valid location, as the court finds, then the lands were open to notorious peaceable, and *bona fide* entry by others for the purpose of initiating a new location. The finding of the court, as has been said, were against the validity of the Barieau location.

Without discussing other grounds of objection made to that
218 location, we are satisfied that it was invalid for at least one reason. Barieau and his co-locators did not at the time of their attempted location, nor ever, make any discovery of mineral upon the land. In considering this proposition, it should be said that the mineral upon these lands is oil. Under the act of Congress of 1897, the location of oil claims is governed by the mineral laws of the United States applicable to the location of placer mining claims. The two requirements admittedly essential to the validity of a location such as this, are that the location must be distinctly marked upon the ground so that the boundaries can be readily traced, and that there must be a discovery of minerals within the limits of the land located. (Rev. Stat. U. S. sec. 2324.) Upon the question of discovery the sole evidence is that of Barieau himself. Giving fullest weight to that testimony it amounts to no more than this, that Barieau had walked over the land at the time he posted his notice and had discovered "indications" of petroleum. Specifically, he says that he saw a spring and "the oil comes out and floats over the water in the summer time when it is hot.

In June, 1895, there was a little water with oil and a little oil with water coming out. It was dripping over a rock about two feet high. There was no pool; it was just dripping a little water and oil, not much water." This is all the "discovery" which it is even

pretended was made under the Barieau location, and we think it clear that such testimony does not establish a discovery within the meaning of the law. To constitute a discovery, the law requires something more than conjecture, expectation, hope, or even indications. The geological formation of the country may be such as scientific research and practical experience have shown to be likely to yield oil in paying quantities. Taken with this there may be other surface indications such as seepage of oil. All these things combined may be sufficient to justify the expectation and hope that, upon driving a well to sufficient depth, oil may be discovered, but one and all they do not in and of themselves amount to a discovery.

This view finds support in the Nevada Sierra Oil Co. *v.* Home
219 Oil Co. 98 Fed. Rep. 673, where the circuit court was dealing with this precise question, in regard to this precise piece of land, under these identical circumstances.

While perhaps it would be stating it too broadly to say that no case can be imagined where a surface discovery may be made of oil sufficient to fill the requirements of the statute, yet it is certainly true that no such case has ever been presented to our attention, and that in the nature of things such a case will seldom, if ever, present itself.

Nor does the view which we entertain of the essentials of a valid discovery as applied to oil bearing lands present any points of hardship, but to the contrary we think it to be not alone the only rational one which may be taken under the law, but also, the only interpretation which offers security and protection to the *bona fide* locator. It is to be remembered that it is not essential to the validity of a location that the discovery shall have preceded or shall co-exist with the posting of the notice and demarkation of boundaries. The discovery may be made subsequently, and when made operates to perfect the location against all the world, saving those whose *bona fide* rights have intervened. One who thus in good faith makes his location, remains in possession, and with due diligence prosecutes his work toward a discovery, is fully protected against all forms of forcible, fraudulent, surreptitious or clandestine entries and intrusions upon his possessions. Such entry must always be peaceable, open and above board, and made in good faith, or no right can be founded upon it. Belk *v.* Meager, 104 U. S. 279; Atherton *v.* Fowler, 96 U. S. 513; Nevada Sierra Oil Co. *v.* Home Oil Co. *supra.*) It was just such a peaceable, open entry upon the land that Miller and his associates made upon December 31, 1896.

No discovery had been made under the Barieau location. No work at all had been done to protect it, and in consequence it could not be said that Barieau and his associates were in the actual *bona fide* possession of their claim and developing it under the requirements of the statute.

This being the case it was the right of any person or association of persons to enter peaceably and openly, as was done by Miller and

his associates. Thus having been determined that the in-
220 itiation of the claim of Miller and his associates was founded in the right, there remains to — considered the objections urged against the validity of that location. And first it is insisted that the location is invalid because Miller, prior to his location, but upon the same day, executed an abandonment to the Government of all rights under the Barieau location, and it is contended that this invalidated the location subsequently made, because such pretended abandonment was not made *not* in good faith, but was designed as a fraud upon the United States to evade the performance of the assessment work required by law. But the answer to this is that the court upon sufficient evidence finds against this contention, and, furthermore, as the Barieau location was itself invalid, there was no occasion for an abandonment of it, because there was nothing to abandon. As to other objections made to the validity of the Miller location, it is sufficient to say, without discussing the evidence, that the court was justified in its finding that the requirements of the posting of a sufficient notice and demarkation of boundaries were all complied with in accordance with law. So, too, the evidence warrants the finding of the court that the persons named as co-locators in the Miller location were *bona fide* locators, and that the location was made for the benefit of them all. Likewise, upon sufficient evidence, the court's finding negatives the charge of fraud, collusion and conspiracy upon the part of these locators.

It is disclosed by the evidence that Miller, his associates and lessees remained in possession of land, and with diligence and great expense prosecuted the work of boring wells. This work finally resulted in success, oil was discovered in paying quantities, and the land became extremely valuable. Plaintiffs thus, not only made a discovery, but are the ones of all the alleged locators who have done so. It has been said that it is not necessary that discovery should precede nor co-exist with the posting of notice and the marking of the claim, but that a discovery subsequently made perfects the title except so far as the rights of others may have intervened. This proposition is perhaps too well recognized to require citation
221 of authorities, but reference may be made to 1 Lindley on Mines, sec. 330; Jupiter M. Co. *v.* Bodie C. M. Co. 11 Fed. Rep. 666; North Noonday M. Co. *v.* Orient M. Co. 1 Fed. Rep. 522; Thompson *v.* Spray, 72 Cal. 528; Erwin *v.* Perigo, 93 Fed. Rep. 608; Erhardt *v.* Boaro, 113 U. S. 527; English *v.* Johnson, 17 Cal. 108. The alleged discovery of defendants under their location may be disposed of in a sentence.

It amounted to no more than the pretended discovery made by Barieau. It results, therefore, that between the date of the Miller location and the date of the Miller discovery no rights had intervened, and the possessory title of the holders under the Millers location was justly quieted against the adverse claimants. It is against this, however, still further contended that, notwithstanding the fact that the location on behalf of Miller and his associates embraced 160

acres in common, and notwithstanding the fact that they had driven successful wells upon the different parts of the land, yet, as at the time of the institution of the suit they had not actually driven a well, and discovered oil upon those portions of the quarter section claimed by the defendants, plaintiffs, claim of title is void as to each of those twenty acres upon which actual discovery has not been made. But a location made by an association of persons, by the very terms of the law, is one location covering 160 acres, and not eight locations, each covering twenty acres. The boundaries required to be marked are the boundaries of the 160 acres, and not the boundaries of each seperate twenty acres. The expenditure of $500 before patent issues is an expenditure required upon the whole land, and not an expenditure upon the twenty acre subdivisions thereof, and the only assessment work required is labor to the value of $100 upon the single location and not upon any twenty acre subdivision thereof. Logically, therefore, since in marking boundaries, doing assessment work and expenditure for patent the 160 acres is treated as an entirety under one location, for the purpose of discovery it should be treated in the same manner, and this is the ruling, with some conflict in its earlier decisions, which the Land Office of the United States has finally returned to and settled upon. In the case of Union
222 Oil Co. 25 L. D. 351 it is explicitly declared: "A placer location, if made by an association of persons, may include as much as one hundred and sixty acres. It is nevertheless a single location, and as such only a single discovery is by the statute required to support it." With this declaration we are in full accord.

The claim of intervenor scarcely merits even a passing notice. The record shows that his alleged location was made upon the 22nd day of December, 1898, after the institution of this action, and long after the plaintiffs had sunk their wells and discovered oil. The intervenor knew that at the time of his alleged discovery the Home Oil Company was in the occupancy of the territory. He entered upon the land and located his claim between the hours of nine and eleven o'clock at night. He adopted for his boundaries the existing boundaries, and his discovery consisted in observing the oil which was coming from plaintiffs' well.

Such a fraudulent, surreptitious and clandestine entry upon the possession of another cannot be made the bases of any right. (Atherton *v.* Fowler, 96 U. S. 513.)

It appears that Miller, his co-locators and other successors in interest remained in the actual and undisturbed possession of the entire property from the date of their location until the commencement of this action. It appears further that upon the 31st day of July, 1897, and before any discovery of oil had been made, Miller's associates and co-locators executed to him a deed of all their right, title and interest in the property. Subsequently, and upon the 17th day of September, 1897, Miller executed a lease of the premises, which lease was transferred to the plaintiff, Home Oil Company. The Home Oil Company thereupon took possession of the premises, bored for,

and in the month of October, 1897, struck oil and made the first discovery upon the land in question. Upon this state of facts intervenor contends that the location was invalid; that the effect of the conveyance of his co-locators to Miller before discovery operated as an abandonment by them of their location, and destroyed the validity of the whole location; that the validity of the location thus having been destroyed, the subsequent discovery of oil did not and could not serve to validate it, and at the most could have given
223 Miller, as the sole remaining member of the association, the right to re-locate twenty acres about his discovery. Stating the proposition in a sentence it is this: That where a location has been made by associates, those associates have no right or title which they can convey before the location is perfected by discovery, and their attempt to convey results in an abandonment of their claim, and in the destruction of the whole location. It sufficiently appears from what has heretofore been said, that a location such as this, made by eight associates, is but a single location, each associate having an undivided eighth interest in the whole. It further appears that certain valuable rights become the property of such locators even before discovery. They have the right of possession against all intruders (Garthe *v.* Hart, 73 Cal. 541), and they may defend this possession in the courts. (Richardson *v.* McNulty, 24 Cal. 339.) They have then this right of possession, and with it the right to protect their possession against all intrusions, and to work the land for the valuable minerals it is thought to contain. We cannot perceive why these rights may not in good faith be made the subject of conveyance by the associates as well before as after discovery. There is certainly nothing in the expressed law upon the subject to lead to the view that this cannot be done, and there is much to give countenance to the contrary conviction. Thus the law expressly provides that if one of the co-locators abandons his claim or interest by refusing to bear his proportion of the cost of the assessment work, such abandonment does not, as would be claimed, work the destruction of the whole location, but "his interest in the claim shall become the property of his co-owners who have made the required expenditures. (Rev. Stat. U. S. sec. 2324.) It is to be born in mind that a location, such as this, though it contain 160 acres, is still a single location, a single claim, with undivided interests, covering the whole of it. Any work done upon the claim is done for the benefit of all the co-locators. It is undisputed that when the location has once been perfected, one of the associates may by conveyance acquire all of
224 the rights of his fellows, and we can perceive no reason why the right to prosecute the work and perfect such a location by discovery may not itself be vested in a single one of them. If, instead of conveying, the seven associates had stood idle and refused to contribute their share to the necessary work of developing, and Miller under these circumstances had alone prosecuted the work to a successful discovery, no one could contend, in the face of section 2324 of the Revised Statutes of the United States, but that Miller would

have acquired the rights of all, and would have had a perfected location covering the whole 160 acres. If then, by their abandonment, without a conveyance, Miller would have acquired the right to prosecute the work and perfect the whole location for himself individually, it is impossible to see why a conveyance to him of their right, instead of an abandonment of it by a refusal to join in the work, should effectuate any different result.

For the foregoing reasons the judgment and order appealed from are affirmed.

HENSHAW, *J.*

We concur:
McFARLAND, *J.*
VAN DYKE, *J.*
ANGELLOTTI, *J.*
LORIGAN, *J.*

225 Argued. Due Oct. 30, 1903.

(Copy.)

In the Supreme Court of the State of California. In Bank.

MILLER ET AL. *vs.* CHRISMAN ET AL. } S. F., No. 2242.

By the COURT:

Rehearing denied, October 30, 1903.
Beatty, C. J., dissenting.

Filed Oct. 20, 1903.

FRANK C. JORDAN, *Clerk*,
By I. ERB, *Deputy*.

226 (Copy.)

Filed Oct. 31, 1903. Frank C. Jordan, Clerk, by —— ——, Deputy.

In Bank.

MILLER ET AL., Plaintiffs and Respondents, *v.* CHRISMAN ET AL., Appellants. } S. F., No. 2242.

(OCTOBER 31, 1903.)

I dissent from the order denying a rehearing of this cause. There can be no location of a mining claim before discovery, and there can be no transfer or assignment of a location before the location is

complete. There can, in other words, be no assignment of the right to locate. If, in the expectation of discovery, an association of persons marks the boundary of a placer claim containing twenty acres for each associate, I have no doubt that they will be protected in their possession while they proceed with reasonable diligence to prospect the claim, and that by a discovery they will perfect it; but if some of the associates withdraw before discovery or attempt to assign their claims to those who continue the work of development, those who remain will have no right to a claim greater in the aggregate than they could have taken by an original location.

BEATTY, *C. J.*

227 In the Supreme Court of the State of California. Bank.

E. O. MILLER ET AL., Resp's, *vs.* A. Y. CHRISMAN ET AL., Def'ts; J. W. Fewel, App's.	S. F., No. 2242. On Appeal from the Superior Court in and for the County of Fresno.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the court herein is delivered by Henshaw J.

We concur; McFarland J., Van Dyke J., Angellotti J., Lorigan J.

Whereupon, it is adjudged and decreed by the court that the judgment and order of the superior court in and for the county of Fresno in the above entitled cause, be and the same are hereby affirmed.

I, Frank C. Jordan, clerk of the supreme court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 30th day of September, 1903, and now remaining of record in my office.

Witness my hand and the seal of the court, affixed at my office, this 5th day of January, A. D. 1904.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By I. ERB, *Deputy*.

228 [Endorsed:] S. F. No. 2242. In the supreme court, State of California. Remittitur. E. O. Miller *et al.*, resp's, *vs.* A. Y. Chrisman *et al.*, def'ts; J. W. Fewel, app's. Clerk's costs $— Paid by appellant, $12.50 Paid by respondent, $— Total, $12.50 Frank C. Jordan, clerk, by I. Erb, deputy.

229 In the Supreme Court of the State of California.

E. O. MILLER and THE HOME OIL COMPANY (a Corporation), Plaintiffs,
vs.
A. Y. CHRISMAN and H. T. CHRISMAN, Defendants. } S. F., 2242.

I, Frank C. Jordan, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of petition for writ of error and assignments of errors on file and as shown by the records of my office.

Witness my hand and the seal of the court, this 5th day of December, A. D. 1903.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By OSCAR A. TOLLE, *Deputy*.

230 In the Supreme Court of the State of California.

E. O. MILLER and THE HOME OIL COMPANY (a Corporation), Plaintiffs,
vs.
A. Y. CHRISMAN and H. T. CHRISMAN, Defendants. } S. F. D., No. 2242.

Petition for Writ of Error.

To the Honorable W. H. Beatty, chief justice of the supreme court of the State of California:

Your petitioners, A. Y. Chrisman and H. T. Chrisman, defendants in the above-entitled action, most respectfully show unto your honor that they are defendants in an action brought by plaintiffs in the superior court of Fresno county to quiet title to certain lands in the county of Fresno, State of California, and described as follows, to wit:

The north east quarter of section 20, township 19 south, range 15 east, M. D. B. & M.

That the complaint in said action was filed in the superior court of said county of Fresno, on the 14th day of October, 1898.

That the defendants, your petitioners herein, appeared and filed a joint answer in said action, the defendant A. Y. Chrisman claiming a certain part of said quarter section, and the defendant
231 H. T. Chrisman claiming a certain other part thereof. J. W. Fewell filed a complaint in intervention in said action, claiming title to a certain other part of the quarter section. All of the parties claimed the land under and by virtue of locations alleged by them to have been made thereon under the laws of the United

States regulating the sale and disposition of the mineral lands of the United States.

A judgment was entered in said superior court of the county of Fresno in favor of plaintiffs and against the defendants and against the intervenor. Appeals were taken on the 16th day of December, 1899, by the defendants and by the intervenor from the judgment and also from the order of the court, denying their respective motions for a new trial, to the supreme court of the State of California.

Briefs were filed by all the parties and after argument the said supreme court on the 30th day of September, 1903, affirmed the judgment and decree of the lower court.

Your petitioners, on October 20th, 1903, filed their joint petition for re-hearing in banc but said petition was denied October 30th, 1903.

Your petitioners further respectfully show unto your honor that in said suit and action of E. O. Miller and The Home Oil Company (a corporation), the plaintiffs therein *vs.* A. Y. Chrisman and H. T. Chrisman, as defendants therein, your petitioners, A. Y. Chrisman and H. T. Chrisman specially claimed the title, right, privilege, immunity and authority exercised under the laws of the United States, and particularly and specially under the provisions of chapter VI title XXXII of the Revised Statutes of the United States, regulating and governing the mineral lands and mining resources of the United States, and also under the act of Congress approved February 11, 1897, (29th U. S. Statutes at Large, 526) and by the proceeding in said suit and action, and final judgment and
232 decree of the honorable the supreme court therein was drawn in question, necessarily involved and passed upon the validity of a statute of and authority exercised under the laws of the United States, where a title, right, privilege and immunity was specially claimed by your petitioners in said action, and the decision of the justices of the supreme court which rendered its decision on the 30th day of September, 1903, was and is against the title, right, privilege and immunity specially pleaded, set forth and claimed by your petitioners A. Y. Chrisman and H. T. Chrisman, defendants in said action, under the Revised Statutes of the United States.

Your petitioners being dissatisfied with the said judgment and decree made by the superior court in this suit and action, and with the order of the honorable, the supreme court of the State of California, affirming the judgment and decree appealed from, and feeling aggrieved thereby, most respectfully pray that they be allowed to prosecute a writ of error to the Supreme Court of the United States, in pursuance of the laws of the United States in that behalf made and provided.

Most respectfully,

A. Y. CHRISMAN.
H. T. CHRISMAN.

CAMPBELL, METSON & CAMPBELL,
Att'ys for Appellants and Defendants.

The writ of error above prayed is allowed.
Nov. 7, 1903.

W. H. BEATTY,
Chief Justice of the Supreme Court of State of California.

233 [Endorsed:] No. 2242. In the supreme court of the State of California. E. O. Miller and The Home Oil Company (a corporation), plaintiffs *vs.* A. Y. Chrisman and H. T. Chrisman, defendants. Petition for writ of error Due service of within — admitted this — day of —— 190- —— —— attorney for —. Filed —— — 190- —— —— clerk. By —— —— deputy clerk. Campbell, Metson & Campbell, attorneys for defendants. Rooms 115, 116, 117, 118, 119, 120, 121, 122 Crocker building, San Francisco, Cal.

234 In the Supreme Court of the State of California.

A. Y. CHRISMAN and H. T. CHRISMAN, Defendants and Plaintiffs in Error,
vs.
E. O. MILLER and THE HOME OIL COMPANY (a Corporation), Plaintiffs and Defendants in Error.

Assignment of Errors.

A. Y. Chrisman and H. T. Chrisman, having petitioned the above-named court for an order permitting it to prosecute a writ of error to the honorable, the Supreme Court of the United States from the final judgment made and entered in said cause by the supreme court of the State of California, now make and file with their said petition the following and specify the same as their assignment of errors herein, upon which they will rely for a reversal of said judgment upon said writ.

1. The decision of the court that the location by Barieau and others upon the 14th day of June, 1895 was not a valid location so as to divest the land of its status as part of the public domain.

2. The decision of the court that Barieau in June, 1895, made no discovery of oil.

3. The decision of the court that Miller, his associates and
235 lessees made a valid discovery of oil.

4. The decision of the court that Miller, his associates and lessees are the only ones of all the alleged locators who have made a discovery of oil.

5. The decision of the court that no work had been done to protect the Barieau location, and that Barieau and his associates were not in the actual *bona fide* possession of their claim and did not develop it under the requirements of the statute.

6. The decision of the court that the Barieau location was itself

invalid and therefore there was no occasion for an abandonment of it, because there was nothing to abandon.

7. The decision of the court that the evidence warrants the finding of the lower court that the persons named as co-locators in the *Miller location were bona fide locators and that the location* was made for them all.

8. The decision of the court that between the date of the Miller location and the date of the Miller discovery no rights had intervened and that the possessory title of the holders under the Miller location was justly quieted against the adverse claimants.

9. The decision of the court that in marking boundaries, doing assessment work, the 160 acres is treated as an entirety under one location and for the purpose of discovery should be treated in the same manner.

10. The decision of the court that the Home Oil Company in the month of October, 1897, made the first discovery upon the land in question.

236 11. The decision of the court that the ground attempted to be located by Miller and associates on December 31st, 1896 by the erection of monuments and posting of a notice upon the 31st day of December, 1896, was then, prior thereto or thereafter during the year 1896, open for location, or was public, vacant or unappropriated mineral land of the United States.

12. The decision of the court that upon January 1st, 1897, the tracts upon which the defendants Chrisman located were not vacant, public and unappropriated mineral lands of the United States and open to location by them or any citizens of the United States or those who had declared their intention to become such.

13. The decision of the court that any rights were vested prior to discovery of mineral within the boundaries of the tract of land sought to be located.

14. The decision of the court that any person could by location acquire any rights upon the public domain under the mining laws of the United States, which would give him the right by virtue of one marking or one placer location more than twenty acres in area.

15. The decision of the court that Miller could become vested with the rights of his seven associates in a 160 acre tract attempted to be located under the statutes of the United States as placer mineral ground, it being admitted that there was no discovery of mineral within the boundaries of said 160 acres at any time, and the seven associates attempted to transfer and convey their alleged interests to the remaining one it being admitted and found that there was no discovery until after said seven associates had made said conveyance.

237 16. The decision of the court that the attempted location of said mineral land by Miller and his associates was made in good faith on or about the 31st day of December, 1896, or thereafter in good faith perfected.

17. The decision of the court that the said attempted location

made by Miller and his associates on the 31st day of December, 1896, was not a fraud upon the United States or evading the laws of the United States requiring one hundred dollars' worth of work to be performed annually upon each and every mining location.

18. The decision of the court in permitting the said Miller and his associates to make or attempt a location on the 31st day of December, 1896, it appearing that the attempted abandonment by the said Miller of the Barieau location of June, 1895, was not concurred in by the said Barieau and that said attempted abandonment by Miller was made for the purpose of relocating the same ground in order to evade the statutes of the United States requiring one hundred dollars' worth of work to be done annually on each and every mining location.

19. The court erred in holding that crude petroleum seeping from the ground was not a discovery, and that a seepage was a mere indication of oil.

20. The court erred in holding that the seepage within the twenty acre tracts located by Chrismans and oil exposed in a spring thereon was not a discovery of mineral within the statute.

21. The court erred in holding that one person could locate a placer claim by one location to twenty acres of ground.

238 22. The court erred in holding that any person in one location of placer mining ground could be vested with any rights from seven associates who had attempted to convey alleged rights to him, and thereby give one person the right to own or control by one location as much as one hundred and sixty acres of mineral land.

CAMPBELL, METSON & CAMPBELL,
Attorneys for Plaintiffs in Error.

239 [Endorsed:] No. —. In the supreme court of the State of California. A. Y. Chrisman and H. T. Chrisman, defendants and plaintiffs in error, *vs.* E. O. Miller and The Home Oil Company, (a corporation), plaintiffs and defendants in error. Assignment of errors. Due service of within — admitted this — day of —— 190- —— —— attorney for —. Filed —— — 190- —— —— clerk. By —— —— deputy clerk. Campbell, Metson & Campbell, attorneys for —, rooms 115, 116, 117, 118, 119, 120, 121, 122 Crocker building, San Francisco, Cal.

240 In the Supreme Court of the State of California.

A. Y. Chrisman and H. T. Chrisman, Plaintiffs in Error,
vs.
E. O. Miller and The Home Oil Company (a Corporation), Defendants in Error.

I, Frank C. Jordan, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is the

original copy of the writ of error and citation on file in this office and as shown by the records of my office.

Witness my hand and the seal of the court, this 5th day of December, A. D. 1903.

[Seal Supreme Court of California.]

FRANK C. JORDAN *Clerk*,
By OSCAR A. TOLLE, *Deputy*.

241 A. Y. CHRISMAN and H. T. CHRISMAN, Plaintiffs in Error,
vs.
E. O. MILLER and THE HOME OIL COMPANY (a Corporation), Defendants in Error.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to E. O. Miller and The Home Oil Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, on the eighth day of January, 1904, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein A. Y. Chrisman and H. T. Chrisman, are plaintiffs in error, to show cause, if any there be why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Beatty, chief justice of the supreme court of the State of California, this 16th day of November, 1903.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

Service of the citation and receipt of a copy of writ of error mentioned therein acknowledged this 19th day of November, 1903.

L. L. CORY,
M. K. HARRIS,
Att'ys for Defendants.

242 [Endorsed:] S. F. No. 2242 In the supreme court of the State of California. A. Y. Chrisman, *et al.*, plaintiffs in error, *vs.* E. O. Miller, *et al.*, defendants in error. Citation. Filed Nov. 20 1903 Frank C. Jordan, clerk by R. D. Duke deputy. Due service of within — admitted this — day of —— 190– —— —— attorney for — Filed —— — 190– —— —— clerk. By —— —— deputy clerk. Campbell, Metson & Campbell, attorneys for plaintiffs in error, rooms 115, 116, 117, 118, 119, 120, 121, 122 Crocker building, San Francisco, Cal. [Across face in red pencil:] Return to.

243 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable justices of the supreme court of the State of California, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of the plea which is in the said supreme court of the State of California, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in that certain suit between E. O. Miller and The Home Oil Company, a corporation, defendants in error, and A. Y. Chrisman and H. T. Chrisman, plaintiffs in error, being the suit numbered in your records as San Francisco, number 2242, wherein was drawn in question the construction of a statute of the United States and also an act of Congress and the decision was against the title, right privilege and immunity specially set up or claimed under such statute and act of Congress, a manifest error hath happened to the great damage of the said A. Y. Chrisman and H. T. Chrisman, as by their complaint and answer appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid *said* in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washingon on the eighth day of January, 1904, in the said Supreme Court to be then and there held, that the record and
244 proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 10th day of November, in the year of our Lord one thousand nine hundred and three.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

SOUTHARD HOFFMAN,
Clerk U. S. Circuit Court, Northern District of California.

Allowed this 14th day of November 1903.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

245 [Endorsed:] United States of America. A. Y. Chrisman and H. T. Chrisman, plaintiffs in error, vs. E. O. Miller and The Home Oil Company (a corporation), defendants in error. Writ of error. Filed Nov. 16, 1903 Frank C. Jordan, clerk By I. Erb deputy. Campbell, Metson & Campbell attorneys for plaintiffs in error.

246 In the Supreme Court of the State of California.

A. Y. CHRISMAN and H. T. CHRISMAN, Plaintiffs in Error,
vs.
E. O. MILLER and THE HOME OIL COMPANY (a Corporation), Defendants in Error.

Know all men by these presents: That we, A. Y. Chrisman and H. T. Chrisman, as principals, and William H. Metson and Joseph C. Campbell, as sureties, are held and firmly bound unto the People of the State of California in the full and just sum of one thousand (1,000) dollars; for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of November, 1903.

Whereas, the action above entitled was originally brought in the superior court of the State of California in and for the county of Fresno, and,

Whereas, said superior court of the county of Fresno rendered and entered its decision in said action, and thereupon on or about June 24th, 1901, caused its final judgment in said action to be rendered and entered awarding to plaintiffs E. O. Miller and The Home Oil Company, a corporation (defendants in error) a judgment therein against defendants, A. Y. Chrisman, and H. T. Chrisman,
247 (plaintiffs in error) but upon which said judgment plaintiffs in error perfected an appeal to the supreme court of the State of California on the 16th day of December, 1899; and,

Whereas, on the perfecting of said appeal, said A. Y. Chrisman and H. T. Chrisman executed in due form and caused to be properly filed its undertaking on appeal in the sum of three hundred dollars ($300) conditioned for the payment of costs and damages that might be awarded to said plaintiff upon such appeal or dismissal thereof, which undertaking remains in full force and virtue; and,

Whereas, by such appeal all of the said judgment in the said superior court of the county of Fresno, State of California, was by the said supreme court of the State of California in all respects affirmed; and,

Whereas, the petition of A. Y. Chrisman and H. T. Chrisman, plaintiffs in error, was, on the 7th day of November duly presented to the chief justice of the supreme court of the State of California, praying for the allowance of a writ of error to the Supreme Court of the United States herein; and,

Whereas, said petition has been allowed by the chief justice of the supreme court of the State of California, and an order has been made that upon plaintiffs in error filing a bond with proper sureties, in the sum of one thousand (1000) dollars, conditioned as required by law, such bond shall stand as for a supersedeas bond herein, operating as

a stay of execution of the said judgment until the final determination of said writ of error by the Supreme Court of the United States.

Now the condition of this obligation is such that if the said A. Y. Chrisman and H. T. Chrisman shall prosecute said writ of
248 error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise it shall remain in full force and effect.

A. Y. CHRISMAN.
H. T. CHRISMAN.
JOSEPH C. CAMPBELL.
WM. H. METSON.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

William H. Metson and Joseph C. Campbell, being duly and separately sworn, each for himself, and not one for the other, says:

I am one of the sureties upon the above undertaking and reside in the city and county of San Francisco, State of California, and am a householder therein. I am worth the sum of five thousand (5,000) dollars in property situate in said State of California over and above all my just debts and liabilities, exclusive of property exempt from execution.

WM. H. METSON.
JOSEPH C. CAMPBELL.

Subscribed and sworn to before me this 14th day of November, 1903.

[SEAL.] GEORGE E. HATTON,
Notary Public in and for the City and County of San Francisco, State of California.

249 In the Supreme Court of the State of California.

A. Y. CHRISMAN and H. T. CHRISMAN, Plaintiffs in Error,
vs.
E. O. MILLER and THE HOME OIL COMPANY (a Corporation), Defendants in Error.

The within bond is hereby approved.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

Nov. 14, 1903.

250 [Endorsed:] No. —. In the supreme court of the State of California. A. Y. Chrisman et al., plaintiffs in error, *vs.* E. O. Miller *et al.*, defendants in error. Bond. Due service of within — admitted this — day of —— 190– —— —— attorney for —— —— Filed —— — 190– —— —— clerk, by —— —— deputy clerk. Campbell, Metson & Campbell, attorneys for plaintiffs in error, rooms 115, 116, 117, 118, 119, 120, 121, 122 Crocker building, San Francisco, Cal.

251 In the Supreme Court of the State of California.

A. Y. Chrisman and H. T. Chrisman, Plaintiffs in Error,
vs.
E. O. Miller and The Home Oil Company (a Corporation), Defendants in Error.

Order Fixing Bond.

Upon the petition of A. Y. Chrisman and H. T. Chrisman, plaintiffs in error, it is ordered that in order to stay execution of judgment pending the writ of error herein, plaintiffs in error shall be required to give bond for costs and just damages for delay herein, as required by law and the rules of the Supreme Court of the United States, in the penal sum of one thousand ($1,000.00) dollars and said bond shall operate as a supersedeas bond, staying execution of said judgment pending the writ of error aforesaid.

November 14th, 1903.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

252 [Endorsed:] No. —. In the supreme court of the State of California. —— —— plaintiff *vs.* —— —— defendant. Order fixing bond. Due service of within — admitted this — day of —— 190– —— —— attorney for —— —— Filed —— — 190– —— —— clerk, by —— —— deputy clerk. Campbell, Metson & Campbell, attorneys for —— —— rooms 115, 116, 117, 118, 119, 120, 121, 122 Crocker building, San Francisco, Cal.

253 In the Supreme Court of the State of California.

A. Y. Chrisman and H. T. Chrisman, Plaintiffs in Error,
vs.
E. O. Miller & The Home Oil Company (a Corporation), Defendants in Error.
} S. F., 2242.

I, Geo. W. Root, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true

and correct copy of an order fixing bond and the bond on file as shown by the records of my office.

Witness my hand and the seal of the court, this 7th day of December, A. D. 1903.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By OSCAR A. TOLLE, *Deputy*.

Endorsed on cover: File No. 19,193. California supreme court. Term No. 171. A. Y. Chrisman and H. T. Chrisman, plaintiffs in error, *vs.* E. O. Miller and The Home Oil Company. Filed January 11th, 1904. File No. 19,193.